ACCOUNTING REFORM AND INVESTOR PROTECTION
VOLUME III

S. HRG. 107–948

ACCOUNTING REFORM AND INVESTOR PROTECTION

DOCUMENTS

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

VOLUME III

ON

THE LEGISLATIVE HISTORY OF THE SARBANES-OXLEY ACT OF 2002: ACCOUNTING REFORM AND INVESTOR PROTECTION ISSUES RAISED BY ENRON AND OTHER PUBLIC COMPANIES

EXCERPTS FROM THE CONGRESSIONAL RECORD

JULY 8, 9, 10, 11, 12, 15, AND 25, 2002

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

S. HRG. 107–948

ACCOUNTING REFORM AND INVESTOR PROTECTION

DOCUMENTS

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

VOLUME III

ON

THE LEGISLATIVE HISTORY OF THE SARBANES-OXLEY ACT OF 2002: ACCOUNTING REFORM AND INVESTOR PROTECTION ISSUES RAISED BY ENRON AND OTHER PUBLIC COMPANIES

EXCERPTS FROM THE CONGRESSIONAL RECORD

JULY 8, 9, 10, 11, 12, 15, AND 25, 2002

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE

87–708 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

PAUL S. SARBANES, Maryland, *Chairman*

CHRISTOPHER J. DODD, Connecticut	PHIL GRAMM, Texas
TIM JOHNSON, South Dakota	RICHARD C. SHELBY, Alabama
JACK REED, Rhode Island	ROBERT F. BENNETT, Utah
CHARLES E. SCHUMER, New York	WAYNE ALLARD, Colorado
EVAN BAYH, Indiana	MICHAEL B. ENZI, Wyoming
ZELL MILLER, Georgia	CHUCK HAGEL, Nebraska
THOMAS R. CARPER, Delaware	RICK SANTORUM, Pennsylvania
DEBBIE STABENOW, Michigan	JIM BUNNING, Kentucky
JON S. CORZINE, New Jersey	MIKE CRAPO, Idaho
DANIEL K. AKAKA, Hawaii	JOHN ENSIGN, Nevada

STEVEN B. HARRIS, *Staff Director and Chief Counsel*
WAYNE A. ABERNATHY, *Republican Staff Director*
MARTIN J. GRUENBERG, *Senior Counsel*
DEAN V. SHAHINIAN, *Counsel*
STEPHEN R. KROLL, *Special Counsel*
LYNSEY GRAHAM REA, *Counsel*
VINCENT MEEHAN, *Counsel*
SARAH A. KLINE, *Counsel*
JUDITH KEENAN, *Senior Policy Advisor*
ALEXANDER M. STERNHELL, *Staff Director, Securities Subcommittee*
LINDA L. LORD, *Republican Chief Counsel*
STACIE THOMAS MORALES, *Republican Economist*
MICHELLE R. JACKSON, *Republican Counsel*
GEOFFREY P. GRAY, *Republican Senior Professional Staff Member*
MARK F. OESTERLE, *Republican Counsel*
KATHERINE MCGUIRE, *Republican Economist*
MICHAEL D. THOMPSON, *Republican Legislative Assistant*
JOSEPH R. KOLINSKI, *Chief Clerk and Computer Systems Administrator*
GEORGE E. WHITTLE, *Editor*
IRENE WHISTON CARROLL, *Assistant Editor*
FRANK E. WRIGHT, *Assistant Editor*
KEVIN D. HIGH, *Assistant Editor*

C O N T E N T S

VOLUME I

TUESDAY, FEBRUARY 12, 2002

THURSDAY, FEBRUARY 14, 2002

WITNESSES

Additional Material Supplied for the Record

TUESDAY, FEBRUARY 26, 2002

WITNESSES

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

WEDNESDAY, FEBRUARY 27, 2002

WITNESSES

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

VOLUME II

TUESDAY, MARCH 5, 2002

Page

WITNESSES

Additional Material Supplied for the Record

WEDNESDAY, MARCH 6, 2002

WITNESSES

Page

WITNESSES

Additional Material Supplied for the Record

WEDNESDAY, MARCH 20, 2002

WITNESSES

THURSDAY, MARCH 21, 2002

Page

WITNESS

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

VOLUME III

MONDAY, JULY 8, 2002

TUESDAY, JULY 9, 2002

WEDNESDAY, JULY 10, 2002

THURDAY, JULY 11, 2002

FRIDAY, JULY 12, 2002

ACCOUNTING REFORM AND INVESTOR PROTECTION

VOLUME III

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, MONDAY, JULY 8, 2002, NUMBER 90, PAGES [S6327–S6347]

Public Company Accounting Reform and Investor Protection Act of 2002

The PRESIDENT PRO TEMPORE. Under the previous order, the Senate will now proceed to the consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

The PRESIDENT PRO TEMPORE. The Senator from Maryland, Mr. Sarbanes, the manager of the bill, is recognized.

Mr. SARBANES. I thank the Chair.

Mr. President, today the Senate turns its attention to S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, which was reported from the Senate Committee on Banking, Housing, and Urban Affairs on June 18 on a strong 17-to-4 vote.

A unanimous consent agreement was entered into with respect to this legislation prior to the Fourth of July recess, which provided that at 2 p.m. today, Monday, July 8, the Senate would proceed, for debate only, to the consideration of this legislation.

I hope to take a fair amount of time to set out the process through which the committee worked and to discuss the provisions of this legislation.

As I understand it, upon convening tomorrow and going back to this legislation, amendments will be in order. There are a couple of technical amendments that I am hopeful we can approve today by unanimous consent. I will be discussing that with the distinguished ranking Republican member of the committee in the course of the afternoon.

Mr. President, I rise in very strong support of this legislation. This legislation is intended to address systemic and structural weaknesses that I think have been revealed in recent months and that show failures of audit effectiveness and a breakdown in corporate financial and broker-dealer responsibility. In fact, it is very clear that much of this has been happening over the last few years.

Hopefully, we have experienced the brunt of it. Who can guarantee that, however, when every day you come to read in the morning paper yet another story, as witnessed this morning with respect to one of the most respected pharmaceutical companies in the country.

I believe this bill is urgently needed. I hope my colleagues will agree with that and will support its swift passage.

The House, earlier this year, passed legislation on this subject, but I think it is fair to say that the legislation we are bringing to the floor of the Senate is more comprehensive, more thorough, and, I believe, more effective. But, of course, once we complete our work here, we will have the challenge of going to conference with our colleagues on the other side of the Capitol to work out the differences between the two versions of the legislation.

Let me discuss for a few minutes the backdrop against which this bill was crafted. Our financial markets have long been regarded as the fairest, the most transparent, and the most efficient in the world. In fact, I think it is fair to say—and many of us have said it time and time again—that the American capital markets are one of the great economic assets of this country and a very important source of our economic strength.

It is becoming increasingly clear that something has gone wrong, seriously wrong, with respect to our capital markets. We confront an increasing crisis of confidence that is eroding the public's trust in those markets. I frankly believe that, if it continues, this erosion of trust poses a real threat to our economic health.

Let me begin with one of the most obvious symptoms of this problem: the extraordinary increase in restatements of corporate earnings. The Wall Street Journal, citing a study last year by the research arm of Financial Executives International, the organization of the chief financial officers of corporations, reported that there were 157 financial restatements by companies in 2000, 207 in 1999, and 100 in 1998. The 3-year total of 464 was higher than the previous 10 years combined, during which the average number of restatements was 46 each year. This is a dramatic increase in the number of restatements.

Last month's revelation by WorldCom is only one example of a problem that is becoming increasingly disturbing. In a recent article titled "Tweaking Numbers To Meet Goals Comes Back To Haunt Executives," the New York Times described a series of recent corporate failures or near-failures that were characterized by accounting improprieties: Adelphia Communications, "$3 billion in

loans to its founding family" had been concealed; Computer Associates was investigated "on suspicion of inflating sales and profits by booking revenue on contracts many years before it was paid"—you raise your revenues, there is no offsetting cost, you boost your profits. Global Crossing is being investigated "on suspicion of inflating sales and profits by making sham transactions with other telecom companies"; Enron, "hiding losses and loans with partnerships that were supposedly independent but were actually guaranteed by the company"—Enron filed for bankruptcy last December—Rite Aid had "four former top executives indicted . . . in what regulators called a securities and accounting fraud that led to a $1.6 billion restatement of earnings"; Tyco International is under investigation "on suspicion of hiding payments and loans to its top executives . . . and its "shares have plunged 75 percent this year as investigators question whether it inflated its earnings and cashflow"; WorldCom, under investigation for "hiding $4 billion in expenses by wrongly classifying short-term costs as long-term investments."

Commentators have made much of the fact that while Enron had very complicated dealings, off-balance-sheet special entities and a host of other things, WorldCom simply took expenses that should have been treated as short-term costs and set them up as capital investments to be amortized over a period of time. Of course, that was a very substantial reduction in WorldCom's costs. As a consequence, its profits were boosted by $4 billion. The SEC asked them to come clean, and now we think there is probably another billion of faulty accounting with respect to their statement.

Can you imagine—the company went from showing a substantial profit to actually having a loss. People are out in the marketplace making decisions about whether to purchase this stock. Pension plans are making decisions on behalf of their members. And they are making the decision in the belief that this company is making a good profit. Instead, it is losing money.

I read one story where competitors of WorldCom were apparently debating within their own corporate ranks: How do they do it? How are these people producing this profit record? We can't do it. We are competing against them. We think we are doing everything we ought to be doing, and we just can't produce the same kind of performance. How are they doing it? What is the secret they have discovered?

The secret they had discovered was to hide their expenses by wrongly classifying short-term costs as long-term investments.

The Xerox Corporation, one of the pillars of our economic system, paid a $10 million fine to the SEC in April, the largest in an enforcement case. They reclassified $6.4 billion in revenue and restated financial results for the last 5 years. I could go on and on with other companies: Cendant, MicroStrategy, Waste Management.

What has led to this increase in restatements? The practice of "backing into" the forecast earnings has certainly contributed. The New York Times described this practice as follows:

> Some companies do whatever they have to do to make sure they do not miss a consensus earnings estimate. They start with the profit that investors are expecting and manipulate their sales and expenses to make sure the numbers come out right. During the last decade's boom, as executive pay was increasingly based on how the

company's stock performed, backing in became more widespread and more aggressive. Just how much so is only now becoming clear.

The distinguished Columbia Law School Professor John Coffee, noted, in summarizing the trend:

During the 1990s, the quality of financial reporting and analysis appears to have declined. While an earnings restatement is not necessarily proof of fraud, this increase strongly implies that auditors have deferred excessively to their clients.

Jack Ehnes, the chief executive of the California State Teachers Retirement System, which oversees $100 billion in investments, put it this way:

This looks like the year of the restatement. It's certainly disturbing for investors who expect financial statements to be accurate.

Clearly, what is transpiring is having a very severe impact on hard-working American families. Corporate wrongdoing is being felt not just at the boardroom table, but it is now being felt at the kitchen table as well.

First of all, there have been tremendous job losses. The Washington Post reported that WorldCom was laying off 17,000 employees. The companies that are going into bankruptcy are shedding employees left and right. Enron laid off 7,000 people after it filed for bankruptcy. Global Crossing laid off 9,300 employees in the last year. Employment at Xerox is down 13,000 from 2 years ago. So there is a direct impact on many working families, simply through the layoffs, as the companies for which they work encounter difficult financial times.

In other words, the company is crashing down, and the workers, amongst others, are paying the price.

Second, the adverse impact on employees clearly extends to the impact of these corporate failures on employee pension funds, an impact that has led many workers to question the security of their retirement. A quick look at the numbers demonstrates how badly public pension funds have been hit.

It is reported that 21 States have combined losses of just under $2 billion from their WorldCom investments. The California public retirement system reported a loss of $565 million. And the numbers go on from there. I won't cite them all, but all across the country there are tremendous losses being incurred. It is said that the loss of value of both WorldCom and Enron has cost public State pension funds $2.7 billion.

Of course, in addition to their impact on workers and pension funds, these revelations have had a negative effect on shareholders generally. Average investors are watching their portfolios plummet and their retirement prospects decline. Worldcom's market capitalization has gone from $180 billion at its peak 3 years ago—this is just WorldCom—to $177 million last week. Tyco lost $90 billion in market capitalization between January 2001 and June 2002, and on and on.

The bond markets have also been affected. WorldCom, for example, has $28 billion in outstanding bonds that are due between now and 2025. Investors, including banks and insurance companies, stand to lose much of this sum. So you are being hit not only if you have a direct connection with WorldCom, but also if you have an equity interest in a bank or insurance company that owns

WorldCom bonds. The current market value of these bonds is 15 cents on the dollar.

The same week that WorldCom's auditing irregularities became public, Morgan Stanley observed that the spread between corporate bonds and comparable Treasury bonds had widened by 15 basis points. As the Wall Street Journal wrote on June 27:

> That is a dramatic move that will boost the borrowing costs for all kinds of companies.

Now, the problems that I have described did not develop overnight. In many ways, they reflect failures on the part of every actor in our system of disclosure and oversight. Auditors who are supposed to be independent of the company whose books they are reviewing are too often compromised by the fact that they provide consulting services to their public company audit clients. Securities analysts are not in a position, according to observers, to warn investors or direct them to other investments.

As the New York Times reported in an article earlier this year entitled "A Bubble No One Wanted to Pop":

> Eager to help their firms generate business selling securities to investors and reap their own rewards and bonuses, Wall Street analysts have made a habit of missing corporate misdeeds altogether.

I will come back to these issues later. But for the moment I simply want to note that the problems leading to such dramatic lapses are widespread and seem to be built into the system of accounting and financial reporting. That is what this legislation seeks to address. Our committee did not engage in an exercise in finger-pointing and placing blame but we held a series of hearings—I will discuss them in a minute—directed toward the future; in other words, we focused on the changes we can make that will help to clear up this situation. It is serious.

The Wall Street Journal, in a recent comment, said:

> The scope and scale of the corporate transgressions of the late 1990s now coming to light exceed anything the U.S. has witnessed since the years preceding the Great Depression.

One can run through the figures and find some support for that. Between its peak in 1929 and 1931, the Dow fell 79 percent. Over the same period since its peak in March 2000, the Nasdaq has fallen 73 percent. But rather than work through these figures, let me simply close this part of my statement with a comment from Benjamin Graham's classic textbook on "security analysis":

> Prior to the SEC legislation . . . it was by no means unusual to encounter semi-fraudulent distortions of corporate accounts . . . almost always for the purpose of making the results look better than they were, and it was generally associated with some scheme of stock-market manipulation in which the management was participating.

He was writing about the year 1929. Regrettably, that description fits some of today's events. Now, I am certainly not suggesting that this is the practice of a majority of our business people. In fact, most of them, I think, try very hard to play by the rules, and to be honest and straightforward in their dealings, and they recognize how important trust is.

But it is clear, from the number of departures we have witnessed from that standard, that what is involved is more than just a few

bad apples. Those bad apples ought to be punished, and punished very severely. I certainly agree with the President when he makes that statement. But it seems to me we have to move beyond that in order to address the incredible loss of investor confidence that is now taking place.

I have been reading the newspaper articles carefully, and sometimes the most apt comments come not from the experts but from ordinary citizens. My colleague from Texas knows that very well because we have a noted citizen of his State, Dicky Flatt, who is constantly cited.

Karl Graf, a financial planner and accountant in Wayne, NJ, is quoted in the Bergen RECORD as saying:

> The integrity of the game is in question for now, and that's a much bigger thing than if the stock market does poorly for two years. You have to have faith in the numbers the companies are reporting, and if you don't or can't, it makes it seem more like gambling all the time. It makes me more cynical, and I'm very discouraged. It's going to take a lot to make people feel confident.

Bob Friend, an aerospace engineer from Redondo Beach, CA, a stock investor for 20 years, was quoted in the L.A. Times as saying:

> There's a complete lack of trust in corporate leadership. I think the lack of ethical behavior has destroyed investor confidence.

Morris Hollander, a specialist in financial disclosure accounting with a Miami firm, was quoted in the Miami Herald as saying:

> We always had the strongest financial markets in the world, and that was because of credible accounting standards. When you see that confidence eroding, it is not good. It is a real serious credibility crisis.

A recent poll demonstrates that these views are not unique or unusual. When asked this question: "when it comes to financial information the major stock brokerage firms and corporations provide to you, do you or do you not have confidence that the information is straightforward and an honest analysis," only 29 percent of Americans said they had confidence the information was straightforward and an honest analysis. A majority, 57 percent, did not have confidence in the basic information that undergirds our equities market.

The Washington Post, on June 26, reported:

> According to economists and market analysts, these still-unfolding corporate and accounting scandals have begun to weigh heavily on the stock market, the dollar, and the U.S. economy. And the effects are likely to linger at least through the end of the year.

The same article quoted the chief economist for one of Wall Street's major firms as saying:

> The economy and markets right now are in the midst of a full-blown corporate governance shock. . . . To presume somehow that it's over or that the worst is behind us is naive.

Furthermore, it is not only American investors who are losing confidence in our markets. A recent New York Times article entitled "U.S. Businesses Dim as Models for Foreigners" quoted Wolfram Gerdes, the chief investment officer for global equities at Dresdner Investment Trust in Frankfurt, as saying:

> There is unanimous agreement that the United States is not the best place to invest anymore.

According to the Federal Reserve Board, foreign direct investment in corporate equities has fallen by 45 percent from 2001 to 2002. And according to a new OECD report, foreign inflows from cross-border mergers and acquisitions, which in 2001 were greater than direct foreign investment into the United States, have fallen sharply in 2002.

The Wall Street Journal said:

> The loss of faith by American and overseas investors in U.S. corporate books is churning global financial markets: Share prices are plunging in America and the dollar is losing value, setting off stock-market plunges in Asia, Europe and Latin America. If the flow of foreign capital to the United States is disrupted as a result, the world economy could be jeopardized, because the U.S. relies on overseas money to finance its huge current-account deficit, and Asia and Europe rely on America to buy imports.

As I draw this preliminary overview of the context in which we are working to a close, I want to speak for a moment about the potential loss of world economic leadership for the United States. The Wall Street Journal had an article entitled “U.S. Loses Sparkle as Icon of Marketplace.” It says:

> The wave of scandals in corporate America is roiling world stock markets. But the controversy may have an even greater impact in the marketplace of ideas, where the U.S. economic model is coming under attack.

One area of particular importance and now debate is adoption of accounting principles. The European Union—and I do not think many people yet in this country have focused on this matter—has indicated that the rules adopted by the International Accounting Standards Board will become mandatory for all companies throughout the European Union in 2005.

Traditionally, the U.S. has been preeminent in the accounting field. We have by far the largest economy. We have a reputation for high standards for transparency. So generally the American argument on behalf of its standards carried great influence. Now we have the European Union, comparable in economic size to the United States, moving to adopt a uniform set of accounting standards, to be promulgated by the International Accounting Standards Board, for all of the European Union countries. So there is a potential for real challenge to American preeminence in this area, given what is happening over here.

In fact, the New York Times reported on June 27:

> There is a groundswell among executives in Europe against the American system of corporate accounting—the so-called generally accepted accounting principles—that was supposed to be the gold standard in disclosure.
>
> Before Enron, Global Crossing and WorldCom, America had been winning the argument on accounting standards. But now, a growing number of Europeans are convinced that the American system is both too complex and too easy to manipulate.

Regrettably, in my view, unless we come to grips with this current crisis in accounting and corporate governance, we run the risk of seriously undermining our long-term world economic leadership. Why do countries look to us? They look to our capital markets. They say: your capital markets are the most transparent; they have the greatest integrity; we can rely upon them; we can make rational business decisions using the information that is provided through your system. If that is no longer the case, we can expect growing difficulties as we continue to argue for our preeminence.

The Wall Street Journal gave this summary of the problem, after which I will move onto the bill itself:

> The institutions that were created to check such abuses failed. The remnants of a professional ethos in accounting, law and securities analysis gave way to the maximum revenue per partner. The auditor's signature on a corporate report didn't testify that the report was an accurate snapshot, said [Treasury Secretary Paul] O'Neill. He says it too often meant only that a company had "cooked the books to generally accepted standards."

I want to be very clear about this. I believe the vast majority of our business leaders and of those in the accounting industry are decent, hard-working, and honorable men and women. They are, in a sense, tarnished by the burden of these scandals. But trust in markets and in the quality of investor protection, once shaken, is not easily restored, and I believe that this body must act decisively to reaffirm the standards of honesty and industry that have made the American economy the most powerful in the world. That is what this legislation does, and that is why I urge its adoption by my colleagues.

Let me now turn to the hearings and to the bill. I know others are waiting to speak, and I will try to summarize my remarks. We have been working on this for a long time, so obviously I could go on at some length.

First, we sought to do a very thorough and careful job in developing this legislation. The committee held a total of 10 substantive hearings and heard from a broad range of experts, as well as interested parties. I am not going to name all our witnesses, but, for example, we heard from five past Chairmen of the SEC; three former SEC chief accountants; former Federal Reserve Board Chairman, Paul Volcker; former Comptroller General and Chairman of the Public Oversight Board, Charles Bowsher; the present Comptroller General, David Walker; a number of distinguished academics who have been studying these issues throughout their careers; leaders of commissions that studied the accounting industry and corporate governance; representatives of the accounting industry; representatives of the public interest community; representatives of the corporate community, and SEC Chairman Pitt.

It was a very thorough effort to gather the best thinking on these issues and to give all interested parties a chance to be heard. My colleagues on the committee, and the ranking member, Senator Gramm, participated in this effort seriously and with commitment. Senators Dodd and Corzine early on introduced a bill dealing with oversight of accounting and auditor independence. Many of that bill's provisions are reflected in this legislation. Senator Enzi, of course, took a particular interest. He is the only certified public accountant in the Senate. Many other Members made important contributions as we moved along the way.

I will now turn to each title. Title I of the bill creates a strong independent board to oversee the auditors of public companies. Title II strengthens auditor independence from corporate management by limiting the scope of consulting services that auditors can offer their public company audit clients. This bill applies only to public companies that are required to report to the SEC. It says plainly that State regulatory authorities should make independent determinations of the proper standards and should not presume

that the bill's standards apply to small- and medium-sized accounting firms that do not audit public companies.

Titles III and IV of the bill enhance the responsibility of public company directors and senior managers for the quality of the financial reporting and disclosure made by their companies. Title V seeks to limit and expose to public view possible conflicts of interest affecting securities analysts. Title VI increases the SEC's annual authorization from $481 million to $776 million and extends the SEC's enforcement authority. Title VII of the bill mandates studies of accounting firm concentration and the role of credit rating agencies.

It is my intention to go through the bill title by title in a summary fashion, but I will pause for a moment and ask my colleague whether he has any time pressures.

Mr. GRAMM. I don't have a time preference as such. My suggestion is whenever the Senator gets tired of talking and would like me to speak a while, I can speak, and then he can come back to it. But I have no objection if you want to go through your whole presentation. You certainly have that right. If you think it will work better doing it that way, that is fine. If you want to break at some point and have me speak, that would be fine.

Mr. SARBANES. Why don't I move ahead, and I will try to compress it a bit.

Title I creates a public company accounting oversight board. This board is subject to SEC review and will establish auditing, quality control, ethics, and independence standards for public company auditors and will inspect accounting firms that conduct those audits. It will investigate potential violations of applicable rules and impose sanctions if those violations are established.

Heretofore we have relied on self-policing of the audit process, private auditing and accounting standards setting, and, for the most part, private disciplinary measures. But questionable accounting practices and corporate failures have raised serious questions, obviously, about this private oversight system. Paul Volcker stated:

> Over the years there have also been repeated efforts to provide oversight by industry or industry/public member boards. By and large, I think we have to conclude that those efforts at self-regulation have been unsatisfactory.

That is obviously one of the reasons we are moving, in this legislation, to an independent public company accounting oversight board. We heard extensive testimony in favor of such a board.

The board would have five full-time members. Two of the members will have an accounting background. All will have to have a demonstrated commitment to the interests of investors, as well as an understanding of the financial disclosures required by our securities law. The board members would be appointed by the SEC after consultation with the Federal Reserve and the Department of the Treasury and would serve staggered 5-year terms. They could not engage in other business while they were doing this work.

Of course, the board will have a staff. We would expect staff salaries to be fully competitive with comparable private-sector positions in order to ensure a high-quality staff.

The bill requires that accounting firms that audit public companies must register with the board. Failure to register or loss of registration would render a firm unable to continue its public company

audit practice. Upon registering, a company would consent to comply with requests by the board for documents or testimony made in the course of the board's operations.

The board would possess plenary authority to establish or adopt auditing, quality control, ethics, and independence standards for the auditing of public companies. But this grant of authority is not intended to exclude accountants or other interested parties from participating in the standard-setting process. So the board may adopt rules that are proposed by professional groups of accountants or by one or more advisory groups created by the board.

These provisions reflect an effort to respond to the argument that you need the experts to either set the standards or help to set the standards. The experts in the industry can make these proposals, but the board will have the authority to adopt or to modify such proposals or to act of its own volition.

We provide for the inspection of registered accounting firms by the board. Firms that audit more than 100 public companies are to be inspected by staff of the board each year. Firms that audit less than that are inspected every 3 years, although the board has the power to adjust these inspection schedules.

The board also has investigative and disciplinary authority. Former SEC Chairman Arthur Levitt told the committee:

> We need a truly independent oversight body that has the power not only to set the standards by which audits are performed but also to conduct timely investigations that cannot be deferred for any reason and to discipline accountants.

If the board finds that a registered firm, or one or more of its associated persons, has violated the rules or standards, it will have the full range of sanctions available.

The board also has the power to sanction a registered accounting firm for failure reasonably to supervise a partner or employee, but we allow an accounting firm to defend itself from any supervisory liability by showing that its quality control and related internal procedures were reasonable and were operating fully in the situation at issue. I am mentioning this item, even though it may not seem that important in the context of a bill this complex, to point again to the effort that was made in the committee to balance competing concerns.

In effect, we say the firms have this supervisory responsibility. They should not duck this responsibility. Otherwise, how are we going to assure the people working for accounting firms are meeting high standards? On the other hand, we realize it is extremely difficult in large organizations to control right down to the last person. So we provided that if accounting firms have quality control and related internal procedures in place that are reasonable and that are operating fully, the operation of those procedures can serve as a defense.

The bill applies to foreign public accounting firms that audit financial statements of companies that come under the U.S. securities laws. The board is subject to SEC oversight, which is important. Finally, we formalize the role of the Financial Accounting Standards Board in setting accounting standards accounting standards are different than auditing standards, which the new oversight board will set. The bill provides for guaranteed funding of the

new oversight board and the FASB by public companies, something I think we all agree is extremely important.

Some have asked, why do we need a statutory board? Why not let the SEC do something of this sort by regulation? But others have raised questions about the adequacy of the authority the SEC has to accomplish all of this by regulation alone. Clearly, a firmer base would be established, a stronger reference point, if the board were established by statute, and the potential of litigation that might arise with respect to some of these disciplinary and fee-imposing powers if they were created solely by the SEC by regulation would be avoided by a clear statutory underpinning.

Furthermore, I believe, frankly, that we need to establish this oversight board in statute in order to provide an extra guarantee of its independence and its plenary authority to deal with this important situation.

Let me turn to title II on auditor independence. This is a very important issue. Each of the country's Federal securities laws requires comprehensive financial statements. That is what is now required under the securities laws for public companies. They have to have comprehensive financial statements that must be prepared—and I now quote from the statute—"by an independent public or certified accountant."

The statutory requirement of an independent audit has two sides to it. It is a private franchise, and it is also a public trust.

The franchise given to the Nation's public accountants is clear. Their services must be secured before an issuer of securities can go to market, have its securities listed on the Nation's stock exchanges, or comply with the reporting requirements of the securities law. In other words, the accountants have been handed by mandate a major piece of business because the statute says to these public companies that they must have comprehensive financial statements prepared by an independent public or certified accountant.

So in effect we have directed to them a significant amount of business. But the franchise, in a way, is conditional. It comes in return for the certified public accountant's assumption of a public duty and obligation.

The Supreme Court stated this well in a decision almost 20 years ago:

> In certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility. . . . [That auditor] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This public watchdog function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

Richard Breeden, Former Chairman of the SEC from 1989 to 1993, under the previous President Bush, said in his testimony before the committee:

> While companies in the U.S. do not have to employ a law firm, an underwriter, or other types of professionals, Federal law requires a publicly-traded company to hire an independent accounting firm to perform an annual audit. In addition to this shared Federal monopoly, more than 100 million investors in the U.S. depend on audited financial statements to make investment decisions. That imbues accounting firms with a high level of public trust, and also explains why there is a strong Federal interest in how well the accounting system functions.

What has happened in recent years is that a rapid growth in management consulting services offered by the major accounting firms has created a conflict in the independence that an auditor must bring to the audit function. According to the SEC, in 1988, 55 percent of the average revenue of the big five accounting firms came from accounting and auditing services; 22 percent came from management consulting services.

By 1999, 10 years later, these figures had fallen to 31 percent for accounting and auditing services, and 50 percent for management consulting services.

In fact, a number of experts argue that the growth in the non-audit consulting business done by the large accounting firms for their audit clients has so compromised the independence of audits that a complete prohibition on the provision of consulting services by accounting firms to their public audit clients is required—a complete prohibition. According to James E. Burton, the CEO of the California Public Employees' Retirement System, CalPERS, which manages pension and health benefits for more than 1.3 million members and has aggregate holdings of $150 billion:

> The inherent conflicts created when an external auditor is simultaneously receiving fees from a company for non-audit work cannot be remedied by anything less than a bright line ban. An accounting firm should be an auditor or a consultant, but not both to the same client.

John Biggs, CEO of Teachers Insurance and Annuity Association—College Retirement Equities Fund, TIAA–CREF, the largest private pension system in the world, which manages approximately $275 billion in pension assets for over 2 million participants in the education and research communities, told the Committee:

> Because auditors owe their primary duty to the shareholders, questions about the primacy of that duty are raised if the audit firm provides other, potentially more lucrative, consulting services to the company. The board and the public auditor should both see to it that, in fact as well as in appearance, the auditor reports to the independent board audit committee and acts on behalf of shareholders. The key reason why awarding consulting contracts and other non-audit work to the audit firm is troubling is because it results in conflicting loyalties. While the board's audit committee is formally responsible for hiring and firing the outside auditor, management controls virtually all the other types of non-audit work the audit firm may do for the company. Those contracts with management blur the reporting relationship it is difficult to believe that auditors do not feel pressure for the overall success of their firm with the client. Even their own compensation packages may be tied to consulting and non-audit services being provided by their firm to the company. . . .
>
> By requiring public companies to use different accounting firms for their audit and consulting services, and by establishing an independent board with real authority to oversee the accounting profession you will be taking important steps toward reversing the crisis in confidence in financial markets that exists today.

We looked at this carefully. We had testimony on the other side. In the end, we took the approach that is outlined in the bill. The bill contains a short list, nine items, of non-audit services that an accounting firm doing the audit of a public company cannot provide to that company. These include, for example, bookkeeping or other services related to the accounting records or financial statements of the audit client, financial information systems design, appraisal or valuation services, actuarial services, management functions or human resources, broker or dealer or investment adviser services, and legal services.

The thinking behind drawing this line around a limited list of non-audit services, is that provision of those services to a public

company audit client creates a fundamental conflict of interest for the accounting firm in carrying out its audit responsibility. If the accounting firm is not the auditor for the company, it can do any of these consulting services—it can do any consulting service it wants. But if it is the auditor—so there is a conflict of interest problem—then we take certain services and say: those services you can't do. And the reason is, first of all, in order to be independent, the auditor should not audit its own work, as it would do if it did financial information system design or appraisal evaluation services or actuarial services. It should not function as part of the management or as an employee of the audit company, as it would if it were doing human resources services, and it should not act as an advocate of the audit client, as it would do if it were providing legal and expert services. Nor should it be the promoter of the audit client's stock or other financial interest, as it would be if it were the broker-dealer or the investment adviser.

They are the public company's auditors. They have a very defined responsibility as the auditors. The bill doesn't bar accounting firms from offering consulting services. It simply says that if a firm wants to audit the company, there are certain services it cannot perform. And even in that case, the bill provides the board authority to grant case-by-case exceptions, so if a case could be made why an auditor's performing a consulting service ought to be permitted, there is some flexibility to permit it.

David Walker, the Comptroller General of the United States, in a statement on June 18 said:

> I believe that legislation that will provide a framework and guidance for the SEC to use in setting independence standards for public company audits is needed. History has shown that the AICPA and the SEC have failed to update their independence standards in a timely fashion and that past updates have not adequately protected the public's interests. In addition, the accounting profession has placed too much emphasis on growing non-audit fees and not enough emphasis on modernizing the auditing profession for the 21st century environment. Congress is the proper body to promulgate a framework [on this important issue].

There are a lot of other auditing services, other than the nine I mentioned, that an auditor may want to provide and whose provision we did not preclude. In other words, the statutory system that we are establishing lists certain consulting services that, if you are the auditor, you cannot perform for the public company that is your audit client, unless you can get one of these case-by-case exemptions from the board. And those consulting services were the ones which, upon examination, seemed clearly to raise the most difficult conflict of interest questions that could result in undermining the auditor's fulfillment of his auditing responsibility.

The public company auditor can provide other non-audit services; that is, any but those on the proscribed list, if it clears them with the audit committee of the public company's board of directors. We seek to strengthen the audit committee in very substantial ways, including, as I will mention later, that they should be the ones to hire and fire the auditors—that the auditors really work through the audit committee for the board of directors and that the auditors do not work for the management. I think it is very clear, to some extent, and in some instances, it is management working with the auditors that have done these clever schemes for which we are now paying the price.

We had the issue of auditor rotation before us. Many witnesses thought the audit firm itself should have to rotate every 5 years, periodically. We did not go that far. We recommend here that the lead partner and the review partner on audits must rotate every 5 years—not the audit firm itself. But we do provide that audit firm rotation should be further studied and direct the General Accounting Office to undertake such a study with respect to the mandatory rotation of the audit firm.

I will move more quickly and skip over some sections, but I can always, of course, come back to them if there are any questions.

We were concerned about the movement of personnel from audit firms to the public company audit clients. There we put a 1-year cooling off period with respect to the top positions in the company, so that you can't hold out to the audit team the immediate prospect of an important position in the company. Again, we are trying to protect the independence of the audit.

The next two titles, III and IV, deal with corporate responsibility and enhanced financial disclosure. As I said, we provide for a strong public company audit committee that would be directly responsible for the appointment, compensation, and oversight of the work of the public company auditors, which makes it clear that the primary duty of the auditors is to the public company's board of directors and the investing public, and not to the managers. We provide that the audit committee members must be independent from company management.

We require that the audit committee develop procedures for addressing complaints concerning auditing issues and also that they put in place procedures for employee whistleblowers to submit their concerns regarding accounting.

Where does an employee go when he sees a problem and is fearful of taking it up with management because his perception is that management is involved with the problem? We specifically provide that they should be protected in going to the audit committee.

We have a provision prohibiting the coercion of auditors. Some have asserted that officers and directors have sought to coerce their auditors or to fraudulently influence them to provide misleading information. Obviously, the auditors ought to be protected from that as well.

We have a provision that the CEO and the CFO who make large profits by selling company stock or receiving company bonuses while management is misleading the public about the financial health of the company would have to forfeit their profits and bonuses realized after the publication of a misleading report.

We also address the question of remedies against officers and directors who violate securities laws, something in which the SEC is very interested.

We have a provision on insider trades during pension fund blackout periods. We prohibit the insider trades. So you can't have officers and directors free to sell their shares while the majority of the employees of the company are required to hold theirs—as, of course, has happened in some instances.

On enhanced financial disclosures, we require that public companies must disclose all off-balance-sheet transactions and conflicts. We require that pro forma disclosures be done in a way that is not

misleading and be reconciled with a presentation based on generally accepted accounting principles. More companies are doing these pro forma disclosures. They really are not accurately reflecting the financial conditions of the company.

We require very prompt disclosure of insider trades—actually, to be reported by the second day following any transactions.

We require the reporting of loans to insiders. There have been some enormous loans made. At a minimum, those need to be disclosed. Some argue they ought to be prohibited. We didn't go that far. Some testified there are some good reasons on occasion that a company ought to make a loan to one of its officers. But, at a minimum, they ought to be disclosed.

This is a small item, but it may have a good benefit. We require public companies to disclose to the investors whether they have adopted a code of ethics for senior financial officers and whether their audit committee has among it a member who is a financial expert. We don't require them to have a code of ethics, although we think they should. We just require that they disclose whether they have one or not.

Title V deals with analyst conflicts of interest. We have had this incredible situation that was brought to the public attention by the efforts of the Attorney General of the State of New York, Eliot Spitzer, in which research reports and stock trades of companies that were potential banking clients of a major broker-dealer were often distorted to assist the firm in obtaining investment banking business. There was one document that actually acknowledged the conflict and, as a result, stated:

> We are off base on how we rate stocks and how much we bend over backwards to accommodate banking.

These analysts would recommend a buy rating on the stock essentially to help out the investment banking firm which was trying to get the company's investment banking business. So they get the analysts to say good things about the company, which will then lead the company to be far more favorably inclined and take on that firm in order to do their investment banking business.

In some instances, they were actually recommending buys and then they were saying to one another what a turkey the company was, but the poor investor was being taken at the time.

We set out a number of provisions in this regard. I will not go through all of them.

We prevent investment banking staff from supervising research analysts or clearing their reports.

We prohibit analysts from distributing research reports about a company they are underwriting.

We have a provision to protect analysts from retaliation for making unfavorable stock recommendations.

We heard moving testimony from someone who said: If you make an unfavorable recommendation, who knows what is going to happen to you?

We also provide—the bill here focuses on disclosure instead of prohibition—that an analyst would have to disclose if he owned the company stock. If you are doing an analysis and if you are doing a report and a recommendation, you ought to disclose whether you own the company stocks or bonds, whether you have received com-

pensation from the company, whether your firm has a client relationship with the company, and whether you are receiving compensation based on investment banking revenues from the company. These are not prohibitions, they are just disclosures.

The thought behind this is, if you are an investor and an analyst is making a recommendation and he puts up front in his analysis that he owns the company stock, or that he is receiving compensation from the company, or that his firm has a client relationship with the company, or that he is receiving compensation based on investment banking revenues received from the company, someone is going to look at this and say: wait a second. I have to take his recommendation in the context of his involvement.

Finally, of major importance is the increase we have provided for the budget of the SEC to, No. 1, provide pay parity for SEC employees; No. 2, enhance information technology and security enhancement; and, No. 3, fund more professionals to help carry out the important investigative and disciplinary efforts of the SEC.

We provide for two studies. One concerns the consolidation of public accounting firms. Senator Akaka was very interested in this. There has been a constant consolidation trend. We have asked the Comptroller General to do the study. And the other is by Senator Bunning directing the SEC to conduct a study of the role of credit rating agencies in the operation of the securities markets.

In closing, there has been broad support for this legislation. Just a few days ago, the Business Roundtable came out in favor of it. The Financial Executives International early on in the process was supportive, as well as the Council of Institutional Investors.

We have tried hard to listen to the concerns people raised.

The procedure here was that before the Memorial Day recess—in fact, in early May, we put out a committee print. As we approached markup shortly before the Memorial Day recess, a number of amendments were proposed. It was urged that we put the markup over. We agreed to do that. We took all the amendments that had been put forward, and other suggestions that were being received with respect to the committee print, and went back and reworked it.

I have to say to you that, in all candor, many of those suggestions were meritorious and in fact are now reflected in the legislation that is before the Senate.

So we tried very hard to listen to people at every step of the way. We then reworked the print. We came back with another committee print. We went to markup on June 18. We made a limited number of amendments in markup and brought the bill out to the floor of the Senate by a 17-to-4 vote.

I simply close by saying how strongly I believe that financial irresponsibility and deception of the sort that we have seen in all of the instances that keep appearing on the front pages of our newspapers are a real threat to our economic recovery. We cannot afford to wait for the next corporate deception, followed by the next round of layoffs, followed by the next collapse of a company's pension fund.

We need to take action to restore public trust in our financial markets, and that really begins with restoring public confidence in the accuracy of financial information. That is what this legislation

seeks to accomplish. I urge my colleagues to support this critical legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I begin by thanking Senator Sarbanes for working with me as we have considered this bill. I congratulate him on this day that we are considering the bill in the Senate.

We had a series of hearings that I wish every Member of the Senate could have attended. I am not surprised that at the end of those hearings good people with the same facts, as Jefferson said so long ago, were prone to disagree.

I find myself in a position where Senator Sarbanes and I agree on many of the key issues of this bill; we differ on others. It is not the first time in managing a bill that we have been on opposite sides.

I reminded Senator Sarbanes this morning that it might very well be this will be the last bill we will ever manage together. Since I am leaving the Senate, and we have something like 40 legislative days left, I do not know whether, after this bill is dealt with, the Banking Committee will warrant any of those 40 days.

But I would like to say for the record that no one can object to the hearings we had, the approach the Chairman has taken. Whether you agree with him or whether you do not, I think his approach has been reasoned and reasonable.

It is clear this issue has attracted a great deal of attention. It is clear that there is a mind in the Congress, if not in the country—Congress is not always reflective of the thinking of the country—but there is a sort of collective mind that we need to do something, even if it is wrong.

I lament, as we have gotten into this debate, that the media has decided that the tougher bill is the bill with more mandates; that if you decided to set up a stronger committee, a stronger board with broader powers so they might decide to go beyond the legislative mandates, that that is a weaker proposal than having Congress actually write auditing standards or conflict of interest standards.

I would submit to my colleagues—and I guess I would have to say at this point, I do not know that we will follow this adage—but I suggest this is a very important bill. I urge my colleagues, as you look at this bill, to realize we are not just talking about accounting. If this bill were just about accounting, it could do some good, it could do some harm, but it could not do too much of either.

But this bill is far more than just a bill about accounting. This is a bill that has profound effects on the American economy; therefore, I think it is very important that we try to look at the problem and that we try to come up with a solution that will be good not just for today, not just that will bring forth a positive editorial in a newspaper tomorrow, but I submit we want to try to find one that meets the front porch of the nursing home test. That is the test where, when we are all sitting around in rocking chairs in a nursing home, and we look back at what has happened under this bill, that we will be proud of what we did and how we did it.

I want to touch on several things. I want to go through and make several points, some related to what the distinguished chairman said, some just because I want to say them. I want to talk about what I believe the problem is. And I want to make it clear that I do not know how to fix it. I do not know that this bill fixes it. I do not believe it does. I do not believe my substitute I offered fixes it either. But I think somebody needs to talk a little bit about it. Then I want to talk about the bill that we have before us, and where I agree with it and where I differ, and what those differences are.

I think the good news is—from the point of view of if consensus is a good thing—there is a consensus, and has been from the very beginning, that we need to pass a law. What this President cannot do is provide an independent funding source and a legal foundation for this independent board.

I personally believe the President's 10-point program was a good program. What the Chairman of the SEC cannot do is provide an independent funding source and provide a legislative foundation for the board. The Chairman and I agree on that.

There have been people who have reached a conclusion that if you differed from Senator Sarbanes, you did not really want a bill. I believe those of us who have differed do want a bill. And the one thing that we agree on, which I think is at the heart of this whole debate, is a strong, independent board to make determinations about conflict of interest and about ethics.

Now, let me touch on the things that I wanted to touch on.

I personally thank Senator Sarbanes for the approach he took in focusing on the problem and on the future. Everybody knows this has now become a political issue. We know that people are either trying to go back and pin this problem on past Presidents or SEC Directors or they are trying to pin the problem on the current President and the current SEC Chairman. I think it is a testament to Senator Sarbanes' leadership that he has had nothing to do with that.

The plain truth is we have had a succession of great SEC Chairmen. Arthur Levitt and I disagreed on many things, but I do not think anybody could argue that he was not an effective SEC Chairman. It is true that he had the ability, under existing law, to go back and change GAAP accounting to set up a board, to do anything he wanted to do, and he did not do it. But it is always so easy to see these things when you are looking with that wonderful hindsight.

Anybody has to give Arthur Levitt credit that he was the first to raise an issue about auditor independence. Whether you agreed when he raised it or not that it was a problem, that it was proven, it is clear that he saw a problem which may or may not be the source of our problem today, but many people believe it is. You have to give him credit. And I don't believe anybody else in his position would have done a much better job than he did.

Let me also say that I think Harvey Pitt has done an outstanding job in the short period of time he has been at the SEC. Much is made of the fact that he did legal work for accounting firms. I continue to be struck by this approach that somehow knowledge is corruption, that somehow the perfect regulator is a

guy who just came in off a turnip truck and who knows absolutely nothing.

It reminds me of Senator McCain was once telling a story about talking to a journalist who was covering the Vietnam War and asking the journalist if he had ever read this seminal work about the history of Vietnam. And the journalist said: No, he had never read it because he wanted to approach the subject with a totally unbiased mind.

There is a big difference, I submit, between an open mind and an empty mind. We make a grave mistake when we discount knowledge. Everybody today, when they are criticizing Harvey Pitt, talks about the fact that he represented accounting firms and security firms. I guess if he were being more aggressive than is the public mood, people would remember that he was probably the most rigorous chief counsel at the SEC in its history and, in that process, brought cases against numerous major companies. They would be saying that that experience had tainted him for his current work.

The point is, the man has broad experience as chief counsel to the SEC, where he prosecuted major firms, and he has vast experience as probably the Nation's premier security lawyer where he defended associations and businesses. And quite frankly, when in doubt, I will go with knowledge. When in doubt, I will take experience. I do not believe that experience taints you.

Let me also say that there is this current mood that anything having anything to do with accountants is somehow bad. Having just praised Harvey Pitt, let me point out an area where I disagree with him. When he set up his board to oversee accounting ethics and to look at issues such as the independence issue, on ethics issues, he does not allow people with an accounting background to vote.

Now I would have to say that I strongly disagree with that for two reasons: No. 1, since when is a person's background a source of corruption? I will address that a little more in a minute. Secondly, when you are looking at what is and what is not ethical practice, I am not saying it is absolutely essential, but it is helpful to have somebody who knows something about what practice is.

I submit that in all of these approaches, from the SEC approach to the approach of this bill, we are probably going too far in putting people in positions where they are going to have massive unchecked authority and they have no real expertise in the subject area.

Anybody who thinks this board is just going to slap around a few accountants does not understand this bill. This board is going to have massive power, unchecked power, by design. I would have to say the board that Senator Enzi and I set up in our bill has massive unchecked power as well. I mean, that is the nature of what we are trying to do here. I am not criticizing Senator Sarbanes. I am just reminding people that there are two edges of this sword. We are setting up a board with massive power that is going to make decisions that affect all accountants and everybody they work for, which directly or indirectly is every breathing person in the country. They are going to have massive unchecked powers.

We need to give some more thought to who is going to be on this board and is it going to be something that is attractive enough to make people want to serve.

In the proposal Senator Enzi and I put together, I thought we could enhance its prestige by making it a little more independent of the SEC. Under the committee bill, which is before us, the SEC would appoint the members of the board. I thought that given the broad nature of its power, which goes far beyond just accounting and far beyond just securities, it would be helpful to have the SEC appoint two members—Senator Enzi and I suggested that one have an accounting background and one not—have the Federal Reserve Board appoint two; have the CFTC appoint two; and then have the President appoint the chairman. I think that board would have a higher profile. With a Presidential appointee as chairman, it would raise the prestige of the board, and we would get better people to serve on the board.

I urge my colleagues, think long and hard when you think about this board exerting tremendous, unbridled, unchecked power, about how many people you want on the board who know something about the subject matter. Today, in an environment where accountants are the evil people of the world, the enemies of the people, having no accountants on this board or relatively few and not letting them vote when ethics matters are being dealt with, I assert that kind of approach means you are not going to have first-rate people who are going to want to serve.

Let me finally get it out of my system by saying: I don't know a whole bunch of accountants. I taught at a public university. About a third of my students in economics were accounting majors. I would have to say that I have a pretty high opinion of accountants. If I had to trust the safety and sanctity of my children and my wife today, after all these revelations about bad accounting, to a politician, a preacher, a lawyer, or an accountant drawn at random in America today, without any pause I would choose an accountant.

I am not saying that there are not bad people in accounting. I am not saying there has not been abuse. But I think we have to separate people from professions.

One of my concerns is, we have already had a decline in the number of people majoring in accounting. I am wondering, I don't care what kind of law you write, I don't care what kind of board you set up, if we don't attract smart young people into accounting, people who understand it is not talent, it is not personality, it is not cool, it is character that ultimately counts, then none of these systems are going to work very well.

Now, I don't buy the idea that legislating something instead of setting up a reasoned system to make decisions is a tougher approach; and if it is, I don't want it. But what we have today is an approach that is largely taken in the media that the more mandates you have, that the more things chiseled inflexibly into law, that the more it is one-size-fits-all, whether it has any rhyme, reason, or responsibility, that that is tougher, and therefore it is better, that in today's environment is obviously appealing.

I hope this doesn't happen, but it would not shock me if we have a series of amendments offered tomorrow when we start dealing

with the bill, where people try to out-tough each other—maybe one to kill all the accountants and start all over and train new ones. Well, nobody would offer such an amendment, but I think we could very easily get into this oneupsmanship that we can end up regretting. I hope that will not happen. I want to discourage that.

Let me give you an example of where Senator Sarbanes and I differ in our opinions. Who is right, I don't know. I think maybe being in this business for a while convinces you that nobody has a lock on wisdom and nobody knows in each and every case what is right and responsible, but I want you to understand the difference of our approach. Let me just go right to the heart of the matter.

The substitute that I offered in committee with Senator Enzi has an independent board. I think it is better, but you can argue that the two boards are pretty similar. Ours is a little more independent of the SEC; though, in the end, to meet the constitutional test, the SEC has to have authority over it. We went a little further in terms of independence and appointing members, and I have already talked about that. But the whole heart of the difference—let's pick one issue—comes down to auditor independence. If you ask me today, should the same company that does an external audit for a firm be able to do internal audits—and I argue today I don't have the knowledge to say this—I would argue today that I really don't know enough about accounting practice and how the process works, not just at General Motors but at the smallest corporation in America, to make that decision. The bill before us sets out the law. It is written in the law that if you do an external audit, you cannot do any one of these nine different things. I don't know, it may well be that after a reasoned analysis a competent board would decide they ought to do those things. My guess is that if I had to decide today, and you forced me to make a decision that was going to be binding on the country, which is a little frightening to me, I might well agree with most, and in some cases all, of these things. But I don't believe we ought to be writing that into law. I don't think anything is gained by writing it into law, and I think a lot is lost by writing it into law.

Having read editorials, I know this makes the bill tougher, but I don't think it makes it better. What I believe we should do is set up the best and strongest board we can, make it independent, give it independent funding, and put competent people on it. The way Senator Enzi and I did it, and there is nothing magic about it other than that we did it, we decided to have the SEC, the Fed, and the CFTC appoint two members, one with an accounting background and one without, and then have the President appoint the chairman, and he could decide.

I personally think that having more accountants rather than fewer is a plus, not a minus. I don't think they all ought to have an accounting background. I don't necessarily say a majority have to have an accounting background, but I believe that day in and day out, 20 years from now when we have all left the Senate and we are not paying attention to these things, it would help to have people who know what they are doing. I don't buy the idea that people who don't know what they are doing are more moral, other things being the same, than people who do know what they are doing. In any case, I believe that rather than writing out these

nine things by law that you cannot do while you are doing an external audit, we ought to set up the strongest board we can, and we ought to give them external funding and plenty of power, and we ought to say to them: you need to look at these nine things and do a reasoned analysis. You need to talk to lots of people, such as smart theorists who are accounting professors at our best universities, and you probably ought to talk to the bookkeeper in Muleshoe who is actually doing bookkeeping work, look at the practical, the theoretical, and make a determination.

Should you be able to do an external audit and do any one of these nine things? You make a decision and set it out in regulation. Why is that better than writing it into law? It seems to me it is better for two reasons: One, if you are wrong, or if accounting practices change, or if your perception of the problem changes, you can go back and change it by regulation. The problem with writing it into law is that Congress then has to come back and change the law. As we know from Glass-Steagall, it took us 60 years to fix something that had it been written in regulation by the 1940s, it would have changed. But we didn't change it until 1999.

The second reason, which I think is equally important, if not more important, is the way the bill is now written might very well make sense for General Motors. That is, it might make perfectly good sense to have a process whereby General Motors might have three or four different CPA firms—maybe more—but they are operating all over the country and all over the world. That is perfectly feasible. But the last time I looked—and I don't know, but some of these may have gone out of business and, God willing, maybe some new companies have come into business—the last time my trusty staff looked, there were 16,254 publicly held companies in America. I don't care how smart you are, I don't care how good your intentions are, you cannot write a mandate, if you get too far in the detail, that fits General Motors and also fits the 16,254th largest company in America. It just doesn't work.

One of the advantages of setting up an independent board, giving them a mandate to look at these areas, but not chiseling it into stone in legislation, is because they can then say, well, here is the principle and if you are General Motors, here is how it applies, but if you are XYZ Paint Company in Montana, or Wyoming, or wherever, you might only have one accounting firm operating in the town that you are domiciled in. I am not saying you cannot hire accountants to come from the Capital City, or wherever, to your town to do work for you, and maybe you ought not to be operating in a little town in a small State; but people choose that, and people who represent small States seem to like these companies being there. I am just saying that giving the board the ability to set a principle and apply it in one way to General Motors and in another way to a small company in a small town makes eminently good sense in practice.

Now, I know it is not a mandate in the same sense as writing it into law, but I think the result would end up being better.

One of the amendments that I will offer—and I thank Senator Sarbanes for trying—and one thing I have to say is that nobody on our committee can say that Senator Sarbanes did not listen. Nobody can say he failed to try to hear them out on their concerns

and that, in many cases, he didn't change the bill to try to respond to their concerns.

One of the changes that I support is giving the board, with the concurrence of the SEC, the ability to grant waivers to these rules and, in fact, to the law. The problem with waivers on an individual company basis is a practical problem, and that is, if 16,254 companies are trying to get waivers under their special conditions—they all come to Washington and hire lawyers and lobbyists; they all petition the board and the SEC—if that board has 16,254 petitions in 1 year, and it could have many times that if people are petitioning for different kinds of waivers, we are going to shut it down for any other purpose except waivers.

What will happen, not because anybody wants it to happen but because of the very nature of Government, the people who will get the waivers will not in general be the most deserving people. They will be the people who hired the best lawyers, who had the best contacts, who knew how to go about it, and who had the money to spend getting the waiver.

My guess is the smallest companies that need the waiver the most will not get them. Surely at some point we are going to fix the bill so that the accounting board, with the concurrence of the SEC, can say: OK, look, in applying this, if you fall into these categories, you have these circumstances, you have a waiver to do things in this way. Clearly, something like that has to make sense.

One of the things we have to come to recognize, and I think we all recognize it, is that having a beautiful law in a law book does not make good law. It has to be practical, and it has to take into account the 1,001—in this case, the 16,254 different circumstances that can apply.

What is the problem? I guess there are as many theories about the problem as there are people. I have my own theory about the problem, and I will share it with my colleagues and anybody else who is interested.

Why is all of this happening now? I believe it is happening because of the problems in GAAP accounting. There are other extenuating circumstances, and I want to touch on them, but here is the problem in GAAP accounting. Senator Sarbanes used a perfect example of it, and I will just take his example. He talked about how WorldCom saw its market capitalization fall from $100 billion to $100 million. How is that possible? I remember when Enron went bankrupt. People said: Where are the assets? When a company goes from $100 billion to $100 million, what happened to the assets?

Here is the problem. Increasingly, the asset is a combination of know-how, credibility, and a belief by the public that you are carrying out your business in an efficient and ethical way. Increasingly, the modern corporation does not have 12 steel mills. They do not own massive physical assets. Many companies have tried, basically, to get out of the asset business into the information business. The value of WorldCom was a discounted present value of what the public believed its revenue stream was relative to its cost. It never had $100 billion worth of physical assets, anything like it. That is what the value of the ideal was as the public perceived it in a period where our wise friend, Alan Greenspan, talked about irra-

tional exuberance. That is what they thought that company was worth, but it never had assets that were anything near $100 billion. What it had was know-how, knowledge of a market, and it had credibility.

Enron was like a bank in the 19th century before FDIC insurance. Their reputation was the source of their value, and when they made stupid business decisions that called that reputation into question, they collapsed.

I have a great sympathy for accounting because I used to be an economist, and in economics, we have something called ceteris parabis. It means "other things being the same." So when we do not know what those other things are, we just utter this Latin phrase and pretend they do not exist—literally pretend they do not exist.

That is valuable in physics where you talked about force equals mass times acceleration, or for every action there is equal but opposite reaction. That is an assumption. That is a simplification because it leaves out friction, and it leaves out gravity. There is nothing wrong with it, but the problem is, accounting cannot do those things.

I had a famous and great accounting professor named David McCord Wright. Nobody remembers him anymore. I can visualize him today easily defining WorldCom. He would have talked about the discounted stream of earnings, and he would have talked about the value of their equity or market capitalization and would have plotted out a projection of revenues and a projection of costs and integrating that area to add it up, and that is where the $100 million was.

I doubt if WorldCom's physical assets ever totaled $50 million, probably not $20 million. You are an accountant and you have the job with the directions that are available through GAAP, generally accepted accounting principles. You have the job of trying to model, for accounting purposes, what WorldCom looks like. You do not have the ability to utter a Latin phrase and wish away things you do not understand. Our problem today is that our GAAP accounting has not kept pace with the world in which we live.

In this world where knowledge is power, in this world where know-how is wealth, it is very hard to model with GAAP accounting. In the decade of the 1990s, when this new model was used on a massive basis in the American economy, accountants had to figure up how much all this stuff was worth.

GAAP accounting has not kept pace with our changing economy. Our accounting is based on the old steel mill of the 1940s where you had how much you paid for the furnaces, and you had them a certain period of time, and you have depreciated them.

How do you depreciate an idea? How do you book having brilliant young people who are committed to the future in your company because they own your stock? How do you put that down in value terms?

So when we are pointing the finger at these people who call themselves accountants, when we are blaming them for every problem in the world, accountants did not put WorldCom into bankruptcy. Accountants did not put Enron into bankruptcy. Enron put Enron into bankruptcy by making bad business decisions. The ac-

counting was a problem because it was slow to show it, but it was there. WorldCom's problems were there. The problem was not accounting. The problem was accounting did not show the problem soon enough.

So if anyone is listening to this debate and thinks some investment is going to be more valuable because we have better accounting, in the long run that is true; in the short run, I am not sure that is true. In fact, I argue these companies would have gone broke anyway. Clearly, they would have gone broke, and they would have gone broke quicker had the accounting system been better. It should have been better. It needs to be better.

The point I am trying to make is the following: When you are trying to model a company using GAAP accounting, it is hard. It is something nobody has ever done before.

We are learning how to do this, and we will—using concepts like goodwill to try to be a proxy for things like intellectual capital and know-how. That is the source of our problems.

I think the fact this came at the end of a financial bubble in the 1990s exacerbated the problem. The problem, in my opinion, is accounting was easier—maybe it was not easier initially. We figured out how to do it on the old model. We will figure out how to do it on the new model.

There is some smart accountant, probably at Texas A&M right now, studying accounting, who will probably get an MBA, who will figure out how to get all this goodwill off our books—which is a silly concept in my opinion, but it is the only one we have—and come up with models of intellectual capital that will have meaning, just as that steel furnace in the 1940s and the write-down of it that made sense, but that is not the world in which we live. That has to be dealt with.

Something the Chairman's bill does, something that I very much am in favor of, is it gives independent funding to FASB. The two things that have to be done and only Congress can do them effectively, in my opinion, are: No. 1, we have to have an independent, self-funded accounting standards board, FASB, and we have to have accountants setting accounting standards. No. 2, we need to set up this board to oversee ethics in accounting.

I do not think it matters whether it has a majority of accountants or not, but it needs to have a reasonable number of people who have a background in accounting so they know what they are doing and so they have an intellectual stake in it being done right. It is a dangerous thing when there are people with massive power who do not have any kind of intellectual stake in the application of that power, and it concerns me.

So to conclude, let me say this: Senator Sarbanes and I, when we were at this point on the financial services modernization bill, were on opposite sides. I was for the bill. I saw it as the epitome of all wisdom. He was opposed to the bill and saw it in less glowing terms. By the time we got out of conference, it was our bill. We were together on it and 90 Members of the Senate voted for it. It passed the Senate initially on a very close vote, a very narrow margin.

I do not think that will be the case here. I think this bill will pass by a very large margin. I also think it is possible that by the

time we have reconciled this bill with the House, that we can have a bill that will be very broadly supported. At that point, I hope I will be in a position of supporting it.

There are many good things in the Sarbanes bill. There certainly has not been a bill, since I have been in the Senate, that was better intended than this bill. I do think it can be improved. I think it legislates too much. I think it does one-size-fits-all mandates. It takes them a little bit too far. That, to some guy outside government, does not sound very important, but it is very important when one starts talking about application. If we do this thing right, and if we build a consensus and it works well, that will be the final monument of the bill.

I hope we can offer germane amendments. As of right now, I think there will probably be two amendments I will offer. One will have to do with this issue about granting waivers on a blanket basis so that rather than making every individual company that has specific kinds of problems come in and ask for an individual waiver, that the SEC and the board, when they agree, could simply issue a set of principles, and if you qualify you would get the waiver. If you do not, you do not. Pretty straightforward amendment.

The second amendment I believe I will offer will have to do with appeals. Under British common law, we have always taken a very strong position in affecting the right of a person to earn a living. We have set very high standards when it comes to taking somebody's livelihood. I believe there are people who are practicing accounting, or veterinarians or economists or any profession, there is somebody in it who ought not to be in it. I think when this board, which is a private entity—and again this is not a problem with the Sarbanes bill. This is a problem of our substitute as well. It is a strange kind of entity. We want it to be private, but we want it to have governmental powers. We have tried to structure it in ways to try to accommodate this.

The bottom line is, when this board is taking away somebody's livelihood and that person believes they have been wronged, they ought to have a right to go to the Federal district courthouse. They ought to have a right to say: I do not think that was right, and I want my day in court.

They ought to have to pay for it, and at that point I think all the material involved has to be made public, but that is a right I think people have to have. Those two amendments are very narrowly drawn, and they go to the very heart of the bill. I know some of our colleagues are thinking about offering a whole bunch of other amendments. I submit that trying to work out a compromise with the House is going to be difficult. I think we will succeed at it, but I think if we get a whole bunch of other issues involved, we are making the mountain higher. I believe we are ready to legislate in this area, and I think if we can limit what we are doing to this area that we can pass this bill, we can go to conference, and we can come back and have a bill signed into law before we leave. I think if we get into a lot of other areas, I am not saying the world comes to an end if you put an amendment on here—having us write accounting standards with regard to stock options, for example, that is a tax issue. I would probably want to make the death

tax permanent as a second-degree amendment, but I am not saying the world comes to an end if we do that.

I am saying if we get off into those kind of issues, where you have strong feelings on both sides of the aisle—and that would not be any kind of partisan vote—I think it is harder for our chairman and for the members of this committee to get their job done. I hope we will have a limited number of amendments. I hope they will be germane to the bill.

Finally, at some point we are going to take up Yucca Mountain. I am not up high enough in the pecking order to have gotten the word as to exactly when that is going to be. Other things being the same, I would rather finish this bill first and then go to Yucca Mountain than to stop in the middle of it. But it is a highly privileged motion. Any Member can make it. It is not debatable. I assume at some point sometime tomorrow that motion will be made. As I figure the time limit under that privileged motion, it would take about a day.

I don't see any reason this bill should not be finished this week, and maybe much sooner if we can stay on the bill, if we don't drift on into these other areas. When people who are for the bill in its current form want to stay pretty close to the bill and people who are against it in its current form want to stay pretty close to the bill, we ought to stay pretty close to the bill.

I thank my colleagues for their indulgence. I look forward to working on this issue. I yield the floor.

The PRESIDING OFFICER (Mr. DORGAN). The Senator from Wyoming.

Mr. ENZI. Mr. President, these are interesting times. I hope colleagues have been listening. The two presentations that preceded me were outstanding explanations of both the bill and the financial problems facing the world today. I don't think you can get a clearer explanation of the problems than those given by Senators Gramm and Sarbanes. They are very detailed and very much to the point and lay the groundwork for what we are about to do.

Usually in this Chamber, we have a solution and we are looking for a problem. Today, we have a problem and we are looking for a solution. We have a problem before the Senate. The way this process works, is that we try to place the solution in the best possible form. Under our form of government, the Senate will work on its bill; the House works on another bill on the same topic. When those two bills have been completed, there will be a conference committee and we will work out the differences. Through every one of those processes, there will be changes to the legislation. We get 100 different opinions from 100 different backgrounds on any piece of legislation. That is what makes our form of government work. At the other end of the building, there are 435 people from different backgrounds. They all lend their opinion issues that come before the House.

It is sometimes a slow process, but it is the best process in the world. It will work on this problem for which we are looking for a solution.

If the economy were different today, we would not have this problem. When there are changes in the economy, we realize ac-

counting problems—or at least that is when the accounting problems become apparent. That is where we are today.

I am the lone accountant in the Senate. There is a good reason for that. Accountants are out there doing very detailed work. When you listen to what is in this bill, you are going to hear details that you do not hear with other legislation. It is the nature of the occupation, of the profession of accounting. In the last 6 months, there has been an increased interest in the accounting profession. Kids in colleges have been asking the Deans about this phenomenon called accounting that nobody has talked about for a long time. It is a tremendous opportunity for accountants to finally explain what they do.

Some of the kids are looking into accounting for the wrong reasons. They want to be one of the green eyeshade people bringing down huge corporations. That is not what it is about. It is an opportunity to make sure everyone understands business in America. Accountants are the people with the very basis who both know it and can explain it. That is their job.

Somewhere along the line, it is possible for people to get distracted from that main goal. We are trying to bring them back to that main goal—providing a basis where everyone can understand the value of the companies in which they are investing.

Today we are addressing accounting legislation that has been reported out of the Banking Committee. It has been through initial scrutiny. It has been through the process that leads us to the floor. I have talked about the floor process, but so far this has only been through the hearings process. We had 13 hearings in the Banking Committee. They were on very diverse topics and a very diverse bunch of people who understood each of those topics testified. I commend Senator Sarbanes for the way he conducted the process of the hearings, and then the process of negotiations that led up to the committee vote. That happened over the last several months. On this issue, I can think of no other Chairman in either the House or Senate who did a more thorough job in conducting hearings. The Banking Committee stayed on the substance and did not allow enormous outside pressures on this issue to interfere with trying to get to the bottom of the real problem. The hearings were not finger-pointing. The hearings were an attempt to get valuable information to arrive at the best possible solution.

In addition, the witnesses at the hearings presented objective views. Had it been my choice to call the witnesses, I would have chosen nearly every person who testified. That shows the care and concern that went into choosing the individuals who provided this basic information. The witnesses offered several different views, and they came from diverse backgrounds.

I also thank the Chairman for the way he and his staff conducted themselves through the endless negotiations we had during that same timeframe.

Right now, it seems as if everyone is writing an accounting bill—including myself. In fact, I got calls as soon as Enron occurred from some of the House Members who said they would really like to work on a bill with me. Of course, the first question I had to ask them was, What did you find really happened with Enron? Usually

the answer was, we don't know yet. Their response was, but we want to get ahead of the curve.

I am glad we had the patience to wait, to hold the hearings, and then to negotiate through a number of different bills to come up with the one before the Senate today. Those negotiations by Senator Sarbanes and his staff were both honest and fair. Although we were not able to agree on everything, which is the basis of negotiation, I believe all negotiations took place in good faith. I thank the Chairman for that. I do think we have a bill that is a good basis for finishing the process and going to conference.

Enron, Global Crossing, WorldCom, and the other numerous restatements that are occurring have caused a ripple effect on the trust of corporate executives and their auditors by the public. These executives, the persons in whom shareholders put their trust, have stained the entire corporate community. A few bad apples have spoiled the bunch. As a result, the legislation we will be debating this week will restructure the way executives operate by increasing accountability and making it easier to discipline fraudulent behavior while at the same time increasing penalties for illegal activity.

This legislation will force the management of companies to be accountable to their shareholders by requiring that they certify the accuracy of their financial statements. In addition, the legislation will require that members of corporate audit committees are independent directors. We provide the audit committee the ability to engage outside consultants and advisers and provide them the resources they need to determine whether the accounting techniques being used are in the best interests of the shareholders.

In addition, all employees should be subject to the same rules when selling company stock. In this regard, the bill prevents officers and directors of a company from purchasing or selling stock when other employees are restricted. And when these officers or directors do sell stock in the companies in which they work, they should report the transaction on the next business day.

However, the cornerstone of this legislation will be to change the way in which a company's auditors interact with their clients, and also to force them to be more accountable. While I believe that accountants have extremely high ethics and standards, I do believe the current environment has highlighted a number of problems inherent in the current oversight structure of the accounting industry.

I do believe it is an awesome task to be the accountant trying to explain this to everybody else. I do need to explain a little bit why there are not more accountants in legislatures or in the Senate or in the House. That is because if you pick up experience in legislating, most of that is done during the tax season and we need the accountants during the tax season. And they need the business during the tax season. If they don't earn at least 70 percent of their revenue during that time, they are out of business, which precludes them from picking up legislative experience. There is no requirement that you have to have legislative experience before you come here. There is no requirement that you have any kind of experience. But that is why there are fewer accountants here than there are a number of other professions—it is a matter of timing.

While I am hesitant to move forward with the number of changes included in the bill, I do believe the legislation is necessary given the current lack of faith in accountants.

Make no mistake about it, this legislation is Federalization of the accounting industry. This bill places a Federal Government bureaucracy at the helm of accounting regulation. While the legislation doesn't prevent the State accountancy boards from continuing to regulate accountants registered in their States, it does establish an overlord regulator to oversee the firms which audit publicly traded companies. My hope is that this new oversight structure will renew the faith the public has in auditors and the financial statements which they help prepare.

In addition to my own proposal, over the past several months I have seen a lot of different proposals. I have also spoken to and met with many of my colleagues about this issue. I have spoken with groups from different industries; I have talked to scholars, consumer advocates, and regulators. All the groups agree that steps need to be taken to enhance the oversight of accountants.

I have examined several existing models of quasi-public regulators such as the New York Stock Exchange and the National Association of Securities Dealers. One point is clear: When these organizations were established, there was a desire to appoint the most informed individuals, those who actually deal with the industry on a day-to-day basis, as majority members of the boards that oversee the industry.

For instance, the National Association of Securities Dealers, NASD, has a large board which must consist of anywhere between 17 and 27 members. Nowhere in the NASD rules does it state their board members may not serve if they have previously been involved in the securities industry. As such, the majority of the NASD board members have worked within the industry.

Why should the accounting industry be treated so differently? Why would we create a board which oversees the accounting industry and then require that a minority of its members have ever practiced accounting? The NASD plays just as important a role in the protection of investors as the accounting oversight board will, so why shouldn't the persons who sit on this board have the best possible knowledge of the accounting industry?

I do want to thank Senator Sarbanes for the change he made in the legislation. Originally it said there could be no more than two accountants on this five-person board. He made the change so that two will be accountants. It is a very significant change so that accountants are represented on the board. Previously it would have been possible to have no accountants regulating the accounting profession.

Every piece of legislation has its handful of unintended consequences, despite how well-meaning Congress can be. I fear the way in which the accounting industry will change when a group of non-accountants set the standards which accountants must follow. Lawyers do not have non-lawyers setting ethical and professional standards which they must follow, yet I would argue that those standards are as important as accounting standards and ethics.

I don't want my message to be misconstrued. I do believe that a board should be established to oversee the accounting industry.

I also agree the board members should have all the tools necessary to effectively oversee the industry. I agree that the board members should be full-time and independent from the accounting firms. I agree that they should be appointed by government and not by industry. But I do not agree that the members of the board should be excluded just because they may have passed a CPA exam 25 years ago.

To the contrary, because I believe this board should be as effective as possible, I believe the board members should know how an audit engagement works and they should know the pressures that are applied to an auditor from a client. I believe with this knowledge the board may in fact apply stricter standards than a board of non-accountants.

As I said, I believe accounting firms should be subject to strict scrutiny. However, I do not believe this legislation should pave the road for the trial bar to open frivolous lawsuits against accounting firms. Arthur Andersen no longer exists. Can we really afford to lose another one or two of the final four firms? We used to call them the big five. Now we call them the final four.

It was mentioned earlier that there are 16,254 SEC-filed corporations. That is 16,254 to be reviewed, primarily by four accounting firms. If the trial lawyers pick off one after another after another of the firms because the Board provides information and because they are handed that information, how will we have those 16,254 audited at all?

I am hoping there are a lot of young people listening who are going into accounting who may start firms and grow the firm themselves so they can handle an audit of a Fortune 500 company. But it doesn't happen overnight. And we have to make sure that there is auditing, and not just consulting, which some people will point out is where most of the money is these days.

It makes me nervous to know that essentially only four accounting firms now have the resources and expertise to audit the world's largest companies. We rely on these firms to verify the books of diverse and complex companies because they are the only firms that can provide this service. If we subject them to the will of the trial bar, they will surely continue to be driven from existence, one firm at a time.

Instead, we should punish the wrongdoers to the fullest extent possible and rely on good managers of companies to do their jobs effectively. In the end, we are going to end up making the audit committee members full-time employees, and then there will not be any independence—another problem about which we have to worry.

Having said this, I do believe this legislation is needed at this time. Congress must produce a remedy to help restore investor confidence. We have seen that real penalties, or at least a threat of strong penalties, need to be hung over the heads of corporate executives to assure they maintain their obligations and responsibilities. The moral and ethical breakdown among some of those executives is disgraceful, and investors must know these executives will be punished severely when they make selfish judgments.

A major concern, as we have gone through this legislation, trying to put the bill in its present form, has been the relationship to small business. As I mentioned 16,254 companies are the ones that

are registered with the SEC. There are thousands of companies out there that are not SEC registered businesses. There are thousands of entities out there that hire auditors to give confidence in the financial statements they have that are not SEC filed.

One of our concerns has been that we not change business so drastically that these small businesses will no longer be able to afford auditors. So we built in protections for the small businesses. Our intent with this bill is not to have the same principles that apply to the Fortune 500 companies apply to the mom-and-pop business. When they hire an auditor, they want that auditor to give them every bit of information they possibly can so the information they get improves their business and doesn't hide anything from investors. Mom and pop are the investors.

We have taken a lot of care to be sure we are not cascading the provisions down into small business. We will look at additional ways, I am sure, to make sure that does not happen. This is not a license to States to do the same thing that we are doing on a Federal basis. There is recognition that on a Federal basis there is a bigger problem than on a State-by-State basis.

I also want to point out there is also a responsibility by the individual investor. They have to learn to diversify and not to keep all of their eggs in one basket. I hope we can turn this situation into a chance to educate small investors as to how best to manage and invest their money. Nothing will bring back the billions of dollars employees of some of these companies have lost. But hopefully the collapse in confidence will ensure that individuals will never again lose their life savings because of a lack of diversification or knowledge of finance.

What will this legislation provide? It will provide a strong oversight body to watch the accounting industry. It will provide a set of corporate governance laws that will require corporate executives to become accountable for their financial statements. It will provide assurances that corporate boards watch the management of the company with a more critical eye—no longer will board memberships be cushy jobs with no responsibility.

It will also provide assurances to the American people that Congress will not allow these millionaire and billionaire executives to steamroll their obligations to the shareholders. It will also ensure that research analysts aren't being told what to say by the investment bankers.

To a great extent, I believe the marketplace has made remarkable changes to address a number of the issues which were highlighted by these corporate failures. First and foremost, corporate boards and audit committees will no longer turn their head when management wants to engage in questionable ethical engagements. Also, credit rating agencies will impose much more scrutiny on the companies they rate to protect financial institutions and other lenders. Lenders themselves will require more information about the stability of the companies in which they invest. Research analysts will ask more questions about the company, and more importantly, they will demand more answers from executives. But perhaps, most important of all, is the fact that investors, both institutional and individual, will be more critical.

Shareholders will wake up and learn about the power of their votes on corporate actions. We've already seen great strides from some institutional investors in that they plan to use their votes in shareholder meeting to keep executives honest and accountable. They also plan to use their votes to impact executive compensation packages. These private sector solutions will be more effective than any legislation which can be passed out of Washington.

One of our country's greatest strengths rests in the dominance of our capital markets. But the strength of our markets is only as strong as the underlying confidence in the listed companies. When these companies build facades instead of standing on principle, it shatters the entire system. Congress and the SEC must find a middle ground where we allow the marketplace to continue to operate in the capital markets to the greatest extent possible but also assures investors, both domestic and internationally, that the U.S. capital markets will continue to be worthy of their investments. We must continue to convince investors, that at the core of the American capital markets, there must be a high level of integrity and ethics by all players.

I want to reiterate another message that has been prevalent this afternoon.

As we get into this bill, there are virtually no limits on what amendments can be put on—at least unless there is a cloture motion.

I hope people will recognize the need to have something done, the need to get it done quickly, and not try and make this a vehicle for everything they ever thought needed to be done with corporations.

The purpose of this bill is not to solve the international problems of business for everything that we ever thought of.

I hope my colleagues will constrain their amendments, keep them to the corporate governance and accounting area we are working on, and help us to get this bill finished as quickly as possible.

Again, I thank Chairman Sarbanes and Senator Gramm for their tremendous efforts and insight which they provided in the previous explanation of this, and for the hours of work they have put into the solution that is before us today. I hope we can keep it to a limited solution, take care of the problems that are recognizable, and reach agreement so we can get this to conference and get a bill to the President for his signature.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent that it be in order to send an amendment to the desk and have it immediately considered. This amendment makes two simple changes to the bill. One is a technical change to conform to the budget rules, and a conforming change involving the definition of "issuers." We have discussed this. It has been cleared. I would like to go ahead and take care of that business, if I could.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, there isn't any objection. I think this clarifies the bill. I think it is something that both sides are for, even though we had a previous agreement not to do any amend-

ments today. It is simply so technical that I don't think anybody would have any concerns.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4173

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. Sarbanes] proposes an amendment numbered 4173.

Mr. SARBANES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make technical and conforming amendments)

On page 65, line 11, strike "All" and insert "Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (h), all".

On page 76, between lines 16 and 17, insert the following:

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking "Definition" and inserting "Definitions"; and

(2) by adding at the end the following: "As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of this title on or before the end of such fiscal year.".

The PRESIDING OFFICER. If there is no further debate, without objection, the amendment is agreed to.

The amendment (No. 4173) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I first want to extend my appreciation to the Senator from Maryland for this bill. It is really well timed and well done.

I received a letter today from the Secretary of State of the State of Nevada, a Republican.

By the way—the Senator from Connecticut is in the Chamber—the Secretary of State worked very closely with the Senator from Connecticut. As the Senator will recall, he is a very fine man. I wish he were a member of the Democratic Party. He is not. But he is an outstanding public servant.

He wrote me a letter, which said:

DEAR SENATOR REID: Investor confidence in the integrity of U.S. securities markets has been badly shaken as a result of Enron, Global Crossing, WorldCom, and other alleged wrongdoing. The failure of several large corporations to police themselves cries out for reform before the negative impact on our markets damages our national economy.

The Senate is to begin consideration of S. 2673, The Public Company Accounting Reform and Investor Protection Act of 2002, on Monday, July 8. I fully support S. 2673 and oppose any efforts to weaken its provisions.

If I could have the attention of the Senator from Maryland, the manager of this bill, I have here a letter from the Secretary of State of the State of Nevada, who says:

I fully support S. 2673 and oppose any efforts to weaken its provisions.

I say to the Senator, one of the things the Secretary of State of Nevada is worried about is someone attempting to weaken the bill that you have brought forward to prevent State securities agencies from looking at wrongdoings in the State of Nevada.

As the Senator from Maryland knows, the Attorney General from New York, who has been here, is very concerned about this. It is my understanding this bill does nothing to weaken that; is that true?

Mr. SARBANES. If the Senator would yield.

Mr. REID. I would be happy to yield.

Mr. SARBANES. That is correct. At one point there was talk of an amendment floating around but——

Mr. REID. But the point is, it is not in the bill?

Mr. SARBANES. No, it is not in the bill.

Mr. REID. On behalf of the Secretary of State of Nevada, who I indicated earlier worked closely with the Senator from Connecticut in bringing forward a very good election reform bill—he is very progressive, and a fine Secretary of State—throughout this letter, he acknowledges how important this legislation is. I wanted this to be spread on the RECORD before my friend's attention was diverted.

Mr. SARBANES. I appreciate the Senator's comments.

Mr. REID. My friend, Secretary of state Heller, goes on to say:

As Nevada's chief securities regulator, I believe there is an immediate need to restore investor confidence in our securities markets.

I stand with my fellow State securities regulators in endorsing Title V, Analyst Conflicts of Interest, in its current form and strongly oppose any amendment to this title that would reduce our ability to investigate wrongdoing and take appropriate enforcement actions against securities analysts. However, an industry amendment has been circulated that would prohibit state securities regulators from imposing remedies upon firms that commit fraud if it involves securities analysts and perhaps even broker-dealers that serve individual investors. If Nevada's investigative and enforcement authority in this area are weakened, so too will the confidence of Nevada investors.

He certainly opposes this.

Mr. President, I ask unanimous consent that the letter from our Secretary of State be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE SECRETARY OF STATE,
July 8, 2002.

HON. HARRY REID,
U.S. Senator, Hart Senate Office Building, Washington, DC

Dear SENATOR REID: Investor confidence in the integrity of U.S. securities markets has been badly shaken as a result of Enron, Global Crossing, WorldCom, and other alleged wrongdoing. The failure of several large corporations to police themselves cries out for reform before the negative impact on our markets damages our national economy.

The Senate is to begin consideration of S. 2673, The Public Company Accounting Reform and Investor Protection Act of 2002, on Monday, July 8. I fully support S. 2673 and oppose any efforts to weaken its provisions. As Nevada's chief securities

regulator, I believe there is an immediate need to restore investor confidence in our securities markets.

I stand with my fellow state securities regulators in endorsing Title V, Analyst Conflicts of Interest, in its current form and strongly oppose any amendment to this title that would reduce our ability to investigate wrongdoing and take appropriate enforcement actions against securities analysts. However, an industry amendment has been circulated that will prohibit state securities regulators from imposing remedies upon firms that commit fraud if it involves securities analysts and perhaps even broker-dealers that serve individual investors. If Nevada's investigative and enforcement authority in this area are weakened, so too will the confidence of Nevada investors.

An amendment may be offered on the Senate floor under the guise of creating national uniform standards for securities analysts. Its real intent, I fear, is to eliminate remedies that state securities regulators may impose on firms should fraudulent activity be unearthed in an investigation. This approach is clearly ill-advised in today's climate of investor uncertainty.

As Nevada's Secretary of State, my office is charged with administering the Nevada Uniform Securities Act. My office is in current negotiations with Merrill Lynch regarding a possible settlement of analyst conflicts discovered in a lengthy investigation by the New York Attorney General's office. My staff is also participating in a task force investigation of UBS Paine Webber/UBS Warburg. This amendment would greatly hamper our ability to investigate analyst conflicts and would have a detrimental effect on Nevada investors.

I urge you to support S. 2673 and to vote against any amendment to weaken the enforcement powers of state securities regulators. The result of an amendment such as this could be that virtually every one of the thousands of actions brought by state securities regulators every year would be preempted, as well as all civil suits and arbitrations under state law. In light of the recent Enron and WorldCom debacles, it simply does not make sense to limit or preempt the state's ability to bring enforcement actions against analysts who lie to Nevada investors. The public is looking for elected officials to help them regain their confidence in corporate America.

As Nevada's Secretary of State, I have a duty to protect our state's investors. Any measure that dilutes my authority as the state's chief securities regulator is counter to the mission of my office and to state securities regulators nationwide. Accordingly, I again urge you to vote against any amendment to S. 2673 that would weaken the enforcement powers of state securities regulators.

Please call me at (775) 684-5709 if you have any questions or need additional information

Sincerely,

DEAN HELLER,
Secretary of State.

Mr. REID. Mr. President, our Nation is experiencing a crisis in confidence among the investing public. Americans hear on the news and read in the papers every day more and more cases of corporate executives bilking employees and investors, and of auditors who looked the other way, of boards of directors failing to provide the oversight expected of them, and of well-connected investors buying and selling stock based on insider information. Investors do not know who they can trust.

We have been in a mad rush the last many years to make sure that the quarter you are involved in has a good financial statement. People go to whatever ends they can to make sure that that quarterly statement looks good to keep the stock price up. That is all that matters. It does not matter whether the company is losing money. It does not matter if their employees are being laid off. It does not matter, as long as they do everything they can to do what can be done to make sure that stock price stays the same or goes up.

I have spoken previously on efforts of Senators to secure the future for American families. In fact, Senate Democrats are using that as a theme: to secure the future for all American families. Securing our future means not only making sure our borders are safe

but also securing educational opportunities for all our children and access to affordable prescription drugs and affordable health care.

We must also provide pension protection for American families. In part, that means extending pension coverage. There will be an opportunity, before this legislative year ends, where we can have a good debate.

The vast majority of workers in Nevada have no pensions. As a consequence, they face their retirement years with inadequate resources. Senator Bingaman, chairman of a task force, has raised awareness of the lack of pension coverage for American workers and is working on legislation to address that problem.

My colleagues have also led the way with other legislative initiatives to restore investor confidence and provide safeguards to secure Americans' investments, pensions, and retirement savings.

Chairman Sarbanes has introduced important legislation that will create a strong, independent oversight board to oversee the conduct of auditors of public companies, and he has done this on a bipartisan basis. That bill was reported out of committee, as I recall, by a vote of 17-to-4, with overwhelming bipartisan support.

This legislation would establish guidelines and procedures to assure that auditors of public companies do not engage in activities that could undermine the integrity of the audit. It ensures greater corporate responsibility by setting standards for audit committees and for corporate executives, but it would, we would hope, impose penalties when standards are violated. It would establish additional criteria for financial statements and require enhanced disclosures regarding conflicts of interest.

This legislation also directs the Securities and Exchange Commission to adopt rules to improve the independence or research and disclose potential conflicts of interest. It also would provide a significant boost in funding for the SEC, the Securities and Exchange Commission, to help it carry out its responsibilities in a fashion that would help restore investors' confidence in the markets.

This legislation goes a tremendous distance in addressing some of the major concerns I have heard from people in Nevada. And I am pleased this bill has gained, as I have indicated, bipartisan support.

Indeed, it seems that after staying silent for so long, and after allowing a permissive atmosphere where businesses could do no wrong, the President, our President, and Republicans in Congress, quite frankly, are now reversing course. Some are falling all over themselves to jump on the bandwagon and support this legislation. They have done it after hearing from an outraged public. And that is good.

Tomorrow I will be eager to hear what the President has to say in New York. I hope that he does not say we are going to have to enforce the law that we have, because the law we have has not been enforced, especially by the people who surround this President and his Administration.

For him to go to New York and say we need to enforce the law more strongly will not do the trick. He needs to jump on the bandwagon with this legislation. We need additional legislation.

The President ran a campaign based on themes such as responsibility and accountability, but recent news reports suggest that both

have been lacking in his explanations of his past dealings in the business world.

Prior to holding public office, our President has parlayed his connections as a member of a wealthy and powerful family to arrange a number of, some would call, sweetheart deals. In editorials they have been referred to that way for the past several days. Despite a string of business failures, our President always seemed to land on his feet and seemed to profit.

Now there are disturbing indicators that he has played fast and loose with some of the rules that he is now being asked, through his Administration, to enforce. When asked about his business dealings, the President has not accepted personal responsibility, instead shifting blame to accountants and lawyers or implying that he was just doing business as usual.

I would have to say there are questions not only about the Harken business dealings but about the business and accounting practices of Halliburton, where Vice President Cheney enriched himself, walking away with tens of millions of dollars.

So the problems we have heard go far beyond Enron and the President's friend, as he referred to him, "Kenny boy," Kenny Lay. They are not limited to the handful of companies getting most of the media coverage in recent weeks. Instead, there are fundamental and systematic problems that have to be corrected. That is what this legislation is all about.

I applaud the chairman and the committee for reporting out this bipartisan legislation.

I hope, I repeat, that the President will join in supporting this legislation. We need to make sure that those who serve as corporate executives and on boards accept the responsibility of their roles when they sign their name on a financial report. The American people need to be able to trust corporate leaders.

Likewise, the President, and those in his administration who came to office from the corporate world, need to show more transparency in letting the American people know how they are making policy decisions, who has access to them, who is influencing them, who is meeting with them.

I joined in an amicus brief with the General Accounting Office to have the Vice President disclose who he met with to come up with energy policy that this Administration enumerated. We need to know with whom he met, when he met with them, and why he met with them. They refused to give us that information. That is why I joined in that litigation.

This administration must set aside what I believe and agree with some—again, it is replete in the editorials of the last few days—is their arrogance and secrecy and instead be open and forthcoming public servants.

This legislation is timely. The Banking Committee jumped right on it. Most of us thought the Enron thing was something that was a rare dealing in corporate America. We have come to find out it is not a rare dealing in corporate America. It has happened since then time and time again. We have only seen the beginning of it, I am sure.

The Banking Committee is to be applauded for moving this legislation forward on a bipartisan basis. By a vote of 17-to-4, it was

reported out of committee. I would hope we can get this bill out of the Senate as quickly as possible. It is good legislation. It is legislation that the American people need to reestablish confidence in corporate America and those people they rely on so that they feel better about having their pensions supplemented with investments made in the stock market.

The stock market is an indication, as far as I am concerned, of how people feel about what is going on in business. As we know from recent days, people have not felt very good about it. We have had tremendous losses. I heard the chairman of the committee, Senator Sarbanes, speak about the Nasdaq losing some 74 percent of its value. That is a significant loss to our country.

I know the Members of the Senate understand the importance of this legislation. I hope that they understand why it is important to move it as quickly as possible. We have a few short weeks to complete lots of extremely important legislation prior to the August recess. As I have said on four separate occasions, this legislation is as important as anything we could do, and it is very timely.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me begin my remarks by commending the distinguished chairman of the Banking Committee. I have said on other occasions and in other places that for students of the Congress who wish to find a good example of how to prepare a committee and ultimately the Chamber for a moment such as this, a good model to use would be the hearings conducted by the chairman of the committee on this very question.

There were 10 hearings—there may have been more, certainly 10 full hearings—to which were invited virtually everyone from across the spectrum on this question. This was hardly a set of hearings where we heard from one side. We literally invited the best experts in the country; they came and shared with us their views and thoughts on what sort of steps we should be taking to reform the accounting profession, to reform the rules affecting the accounting profession.

I begin by extending my compliments to the chairman and his staff for the tremendous job done to lay the groundwork. Oftentimes we will see, particularly in light of a crisis that occurs, there is a rush to judgment. We will come very quickly to the floor with a sort of a cut-and-paste job with the legislation. I am not suggesting intentions are not good, but that is oftentimes how we react.

This set of hearings did, very deliberately, with a great deal of patience and thought, lay out the foundation for the legislation now before the Senate.

Certainly, while there will be ideas offered to improve the legislation, we think the committee has produced a very fine product. The best evidence of that is the fact that 17 of us in the committee found this proposal to be worthy of our support. There were four dissenters. I think even among dissenters, there was a sense that we were heading in the right direction. Some may have fundamentally disagreed, but if there were one in the four, I don't know which one it would have been. Most thought we were doing the right thing, either that we went a little too far or didn't go far enough possibly, but this is a very balanced approach.

I urge our colleagues to be careful of two potential actions in the coming days. One would be to dilute this product in some way. We are not suggesting we have written perfection here, but we think this is a well-balanced proposal.

Senator Sarbanes has worked closely with our colleague from Wyoming, Senator Enzi, who is the only Member of this body who is actually a former member of the accounting profession. He brings a wealth of personal knowledge and awareness to the issue. He worked very closely with him and other members of the minority, as well as with those of us on the majority side, to finally bring this product to the Chamber. It already has involved some compromise.

At this hour, when investor confidence is going to be absolutely critical and the steps that we take and the language we use will in no small measure contribute to the restoration of confidence, it can just as easily do the opposite, if we are not careful. This is a critical moment in the economic history of our country.

The steps taken by those who are in significant positions to affect the outcome of the course we are on are going to be critically important.

The second caution I express is that we don't try to also overburden this bill to say that this is the only opportunity for us to deal with every other issue affecting corporate business life in America. I am not suggesting the ideas Members will want to bring to the table are bad. But we can so load down a good bill that we can sink this effort if we are not careful. I urge my colleagues as well to be restrained in the temptation to bring up every other idea and incorporate it as part of an accounting reform proposal. Those are the two cautionary notes I have.

Let me also add my voice to those who have expressed theirs earlier today. Tomorrow I know the President of the United States is going to give a very important speech on Wall Street in New York, the financial capital of our country. I commend him for doing so. I think it is extremely important that he actually go to Wall Street to share his views.

My hope would be that this evening, as he makes the final preparations for his remarks, he would come out four square and endorse this proposal that we have brought out of our committee by a vote of 17 to 4. I can't think of anything more the President could do in the next 24 hours, aside from the rhetoric he will offer, than to endorse this bill and to say this was a good effort and to talk about the laborious hearings we have held to learn exactly what was necessary to incorporate in this legislation.

Lastly, I would hope we would get this bill done fairly soon and not let this go on too long. We would love to be able to not only finish our work here but to go to conference with the House, which has another proposal. It is a weaker proposal, in my view, but nonetheless we will have to work with them to resolve our differences and to send a bill to the President for his signature.

I would hope that before we leave for our August break less than 3 weeks from today we would actually be able to give to the President a bill for his signature and not let it drag on over into September and October. It is important we act in a timely fashion.

With those background thoughts, I would like to share some general comments about the bill itself. The importance of this issue cannot be overstated. Anyone who has read a paper or turned on the news or flipped on their computer is aware of the crisis in our financial markets and, in fact, beyond that, in our Nation. No rule or regulation is enough to address this fundamental problem.

The issue causing all of this turmoil is about the simple word of "trust." The question that the world is asking is not whether our companies or corporations or the workers who toil in them or the products and services are competitive, but simply whether we are telling the truth. Are we telling the truth?

The reason people of the world so often have come here and invested their hard-earned resources is not because there is a better deal to be made financially speaking. It is because there is a sense that our structures are sound, transparent, and they are fair. You may end up losing your investment; you may make money on your investment. That is always a risk when you make a financial investment. But the one thing you could always say about the United States, as opposed to almost any other place around the globe, is that when you come to America and invest your money, there is a sense of fairness and trust and soundness to our financial institutions and the structures that we created to protect them.

That trust has been fractured by the events that have occurred over the last 9 months, And it continues to be fractured with daily reports. So it is vitally important that we respond in an appropriate and thoughtful manner as the Congress of the United States. We have done so, in my view, with the proposal the chairman has brought to our attention. The very integrity of our markets is being questioned, and the Congress must respond cautiously, prudently, and also expeditiously.

Enron's collapse in December was, of course, an enormous shock to all of us. Seven or eight months later, we have seen that Enron was not an isolated incident. There have been a whole host of corporate accounting scandals and collapses—names such as WorldCom, Global Crossing, Tyco, Adelphia, the list goes on and on. I fear, as my colleagues do, that the latest corporate accounting scandal with WorldCom will not be the last. I hope it will be, but my fear is it will not be.

The Congress should address the critical issue of accounting reforms as quickly as we can. America's financial engine does not need a tuneup, it needs an overhaul. We must disassemble it in some ways, examine every nut, bolt, and working part, and reassemble it to reflect the days in which we live.

The fact is, if we fail to act on serious reforms, America will see a continuation of the dangerous and discredited corporate accounting practices that have, in the past 7 months alone, cost American shareholders and workers billions of dollars in their savings and pensions. This has deeply shaken investor confidence, and that serves as a cornerstone of our economic system.

It is important to note that in the dozens of hearings surrounding Enron's collapse, no committee has engaged in a more nonpartisan examination, focused not just on what went wrong with Enron but, far more important, what Congress can do to prevent future Enrons from occurring in the days ahead.

On March 8 of this year, Senator Jon Corzine and I introduced legislation, S. 2004, that addressed what we thought were some of the tough issues on improving regulatory oversight of the accounting profession and restoring investor confidence. I worked closely with the chairman, as did Senator Corzine, to incorporate some of the language and spirit of S. 2004 in the legislation before us today.

I thank the chairman for including in the product before us much of what we wrote in S. 2004. I thank his staff, and I also thank my colleague from Wyoming.

Congress must act quickly. If nothing else, we must address the most prominent cause of the recent corporate scandals, the practices inherent and common to the accounting profession, and particularly the ability to audit a company's books while simultaneously providing other services to that same corporation. We saw this with Enron and Andersen. Now we see it with WorldCom and the pending investigations that have greatly contributed to the public's loss of confidence in our financial marketplace.

Since the beginning of the year, while our economy has been rebounding from last year's economic downturn and most economic indicators point to a bull market, the Nasdaq is down more than 20 percent, the Dow is down more than 3 percent, and trading volume has declined. One reason may be investor skepticism that companies are not as financially healthy as they have said they were. More restatements on corporate earnings have been filed in the past 7 months than in the last 10 years combined. Most of these restatements dramatically downgrade the financial health of the companies in question.

Not surprisingly, the public is quickly losing trust in disclosed corporate financial information. Although the investing public may be reacting to the bad behavior of a few, the possibility of conflicts of interest between accounting firms and the companies they audit creates a perception that this aggressive accounting is commonplace, even when it may not be. This perception, which takes on its own sense of reality, has led to a very dangerous, least-common-denominator thinking in which the estimated worth of all public companies may become undervalued because some are proven to be seriously overvalued.

The fact is, a few key reforms included in this bill can go a very long way toward shoring up the public's confidence in the integrity of America's financial marketplace.

Most importantly, to enhance auditor independence, the legislation restricts the ability of accounting firms to audit a company's books while simultaneously providing other services. It also addresses the revolving door through which executives from one firm leave to work for the companies they audit.

This reform legislation includes the creation of an independent body to oversee the accounting profession, with substantial authority to ensure auditor discipline and improve audit quality. The Securities and Exchange Commission will also be given the resources to hire more accounting "cops" to handle increasingly complex oversight responsibilities and improve the agency's investigative and disciplinary capabilities. The Government must be able to assure the public that audits meet the high standards of independence

and objectivity that have been the hallmark of America's accounting profession.

The accounting profession is a great profession. There are thousands of highly qualified, talented, ethical people in the accounting profession. I feel for them at this hour. Because of the malfeasance and fraud committed by some, the many who work in this profession feel tainted by it. I regret that. The best way I know to recover the confidence people have in this profession is to provide some regulatory framework that would allow for auditor independence and for professionalism to be restored at a time when it has been so badly damaged.

Investors are depending upon us to act on this issue and set aside partisan conflicts. As I said, we should not dilute this legislation and make it far less important, less meaningful, or overburden it by trying to add too much to the bill. It is not an easy path to walk down. I urge my colleagues to listen to those of us who worked on this bill, particularly the chairman, as we try to balance the particular needs of our members and the desire to come up with a good, competent, bipartisan piece of legislation. This is not an easy path to walk down, but it is critically important if we are going to contribute to the restoration of investor confidence as part of our responsibilities as members of this historic Chamber.

The purpose of the original securities laws of the 1930s was to increase public trust in America's financial markets, the reliability of disclosed corporate financial information. The resulting openness and accuracy of corporate disclosures to the investing public paved the very way for America's rise as the unrivaled economic superpower that we had achieved. The collapses of Enron, WorldCom, and other corporations, and the accounting scandals have ended any question about whether these laws need reexamination. They do. We know that reforms are mostly needed to protect and strengthen the public trust in America's financial markets, and the time to enact them is now. I am confident and hopeful that we will do just that in the ensuing days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the very able Senator from Connecticut for his kind remarks about our work together on the committee as we tried to move this legislation forward. I particularly want to underscore the very substantial and significant contribution that the Senator from Connecticut and his colleague from New Jersey, Senator Corzine, made when they came forward fairly early on in the process with S. 2004.

Much of that legislation is included in this legislation, and it was a seminal contribution early on in our consideration and it helped us to move ahead. I am grateful to him for that and for his efforts and support throughout this process as we have tried to move this legislation forward.

The Senator from Connecticut, of course, is a chairman of one of our subcommittees and has been enormously effective within the committee in his efforts on this legislation, and I appreciate that. I am very hopeful that we are going to get a good product at the

end of the path—of course, we are not there yet—which the President will sign and which will make a substantial difference.

It is a tragedy, in a sense. The founder of the accounting firm Arthur Andersen was a man of great rectitude and very high principles. He had the slogan "think straight and talk straight" to guide him.

His successor, Leonard Spacek, also was a man of very high principle. For that company with those origins, in that tradition, to in effect have happen what has happened to it is a tragedy, there is no question about it.

We are anxious to reassure accountants all across the country that we think this legislation will help bring the profession back to the standards that marked it at an earlier time and which standards more thoughtful and more responsible members hope will mark it once again.

The point the Senator from Connecticut made in that regard is an interesting and important one.

Mr. DODD. I thank the chairman.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (MR. DODD). Without objection, it is so ordered. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I begin by saying the Senator from Maryland has done this Senate and this country a great service, along with his colleagues, including the Presiding Officer, by writing legislation that addresses a critically important topic at a very important time in this country.

As much as I appreciate the work done on this bill, I would still like to speak about a few ways in which we can strengthen it. I listened with some attention in the last hour or so as I presided in the Senate to the suggestion that we ought not change it much. I do not disagree with that assessment, but we ought to change it some, in my judgment. There are some areas we can strengthen, and I hope we can strengthen this legislation and send it on to the President and have the expectation the President will sign it.

This Chamber has long been the site of debates about excesses and abuses, especially in America's poverty programs. We have heard over a couple of decades, and appropriately so, anecdotal stories about the Cadillac welfare queen who spends food stamp money to buy cigarettes. Congress has clamped down on all of that and said: Shame on you, you cannot do that, that is abusing the public trust. And it is. So we have taken aggressive action as we have seen these abuses.

Today this discussion is not about the abuse of the poverty program or the abuse at the bottom, this is about fraud in the boardroom; it is about abuse at the top. It is important for all of us to understand that accountability and responsibility do not just apply to poor people in this country, accountability and responsibility apply to everyone, and that includes the people at the top of the corporate structure.

I wish to talk about fraud in the boardroom, about deceiving investors, about cooking the books, about accounting firms that cannot account, about law firms that turn a blind eye. I wish to talk about the situations the country has seen in recent weeks and months that we have not seen for many decades in this country.

The victims, of course, are the people in this country who have invested in stocks, who believed in the certification of financial statements by some of the biggest accounting firms in the country that these were good corporations, that they had good income, that they were moving in the right direction, taking steps so that the funds in corporations were accounted for properly. And now we discover that was not necessarily the case in all too many instances.

Of course, there are a lot of wonderful corporations in this country, wonderful companies with terrific top executive officers who do the right thing, always do the right thing. Yes, they take some risks, but they do it in anticipation of gain for the stockholders. We ought not tarnish with the same brush all American corporations, but we ought to determine what is happening within some of these corporations that has caused the collapse and the devastation of a lifetime of savings for many Americans.

Let me use Enron as an example. We spent a fair amount of time with Enron hearings in the Commerce Committee. We had top executives of that company who had been cashing out prior to Enron going bankrupt. I have a chart that shows the way in which the top management of Enron made fortunes on the sale of Enron stock, from 1998 to the present, at the same time that they were driving their company into the ground.

Contrast this with a call I received from a fellow in North Dakota one day who said: I worked for Enron for a good number of years. I had a retirement plan, and all my retirement plan was in Enron stock. Mr. Lay and others repeatedly encouraged us to do that. My retirement plan was in Enron stock. It was worth $330,000. Now it is worth $1,700. He said: That is what happened to my life savings—$330,000 to $1,700.

What happened to the folks at the top of the ladder in Enron? Mr. Lay, the chairman of Enron, from 1998 to the present, sold $101 million worth of stock. That is what he received. Mr. Rice, $72.7 million; Mr. Skilling, $66.9 million; Mr. Fastow, $30 million.

Mr. Fastow was able to have an equity role in the special purpose entities, the off-the-books partnerships, and in one of them he actually invested $25,000 of his own money. He invested $25,000, and 2 months later paid himself $4.5 million. I do not know anybody who gets returns like that anywhere in America, except by cheating.

In the year 2001 in American corporations, the average pay for top CEOs increased by 7 percent, despite falling profits and stock values. Is there a relationship at the top between people who run the companies and the performance of the companies themselves? It does not look like it, does it?

In 1981, the average executive compensation of the top 10 highest paid CEOs was $3.5 million. In the year 2001, the average was $155 million. So we can see what has happened in this country at the top in the boardroom.

Let's look at the number of times that CEO pay exceeds average worker pay: In 1980, they made 42 times the pay of the average worker in the company. In 1990, they made 85 times the pay of the average worker in the company. But in the year 2000, it was 531 times. So forty-twofold to five hundred and thirty-onefold. That is what has happened to executive compensation at the top of the corporate ladder.

We have seen story after story about what is happening in some of the boardrooms. There are a lot of wonderful companies, and I do not think this ought to tarnish all American corporations, but we ought to be very concerned about what is happening inside some publicly traded corporations and why the safeguards have not been able to provide early warning to investors and others.

Adelphia: The drop in their stock value is 99 percent. The question is whether it failed to properly disclose $3.1 billion in loans and guarantees to the family of the founder.

Dynegy: Whether the Project Alpha transactions served primarily to cut taxes and artificially increase cashflow, 67 percent of their value lost.

Enron lost 99.8 percent of its value. In fact, as I have mentioned before, the Enron board of directors commissioned a report called the Powers Report which looked at only three partnerships, and they described what was happening inside this company was "appalling." The board of directors of the company itself said what was happening inside the company was appalling. They said that in one year they reported $1 billion of income they did not have.

Global Crossing: Whether it sold its telecom capacity in a way that artificially boosted 2001 cash revenue, 99.8 percent loss in value.

Halliburton: Whether it improperly recorded revenue from cost overruns on big construction jobs.

The list, of course, goes on.

Qwest: Whether it inflated revenue for 2000 and 2001 through capacity swaps and equipment sales.

On the weekend talk shows, I heard a panel discussion about this, and one of the panelists who is kind of an academician said the market is just adjusting. That is an antiseptic way, by an economist I suppose, to ignore the fact that families are losing their life savings.

Sure, the market is adjusting, but it means families are losing everything they have. It means investors with 401(k)s see that 401(k) shrink so their life savings are disappearing right before their eyes.

The question with all of these issues is: What has changed? Why, with big accounting firms taking a look at what is going on—and today there is a hearing on WorldCom in the House of Representatives—why, with big accounting firms looking over their shoulder, has this sort of thing occurred?

With Arthur Andersen and Enron, they had a $25 million relationship by which Arthur Andersen audited the Enron Corporation, and Arthur Andersen was also paid $27 million by the Enron Corporation for consulting services. That is one of the things that is at the root of this bill: Is that not a clear conflict of interest? Is there not enormous pressure on the accounting firm then to become

an enabler for that corporation? The answer clearly is yes, and that is why this legislation takes action to deal with some of those issues.

I was driving in the car over the weekend in North Dakota and saw that the Xerox Corporation had a substantial restatement of earnings. It indicated that the SEC had previously taken a look at it and fined Xerox $10 million, which seems to me like pretty much a slap on the wrist when you consider the billions of dollars involved in the restatement. Then we hear this big story this weekend about yet another restatement. So what we have is a restatement, and then a restatement of the restatement of earnings.

What is the cause of all of this, and what is enabling it? With Enron, for example, it was an accounting firm that became an enabler; it was a law firm that became an enabler; it was CEOs who became greedy, officers of the corporation who did not pay much attention, who also, incidentally, were making a great deal of money selling stock, board members selling stock. It all became a carnival of greed.

I indicated, after having spent a lot of time looking at Enron, that there was a culture of corruption inside that corporation. The CEO of Enron took great exception to that, but it is clear every passing day, with more and more evidence of what happened inside that company, that there was in fact a culture of corruption.

How do we respond to that, and how do we deal with that? I think that, first of all, the rules have to be changed some, and that is what this legislation attempts to do. Second, even if there are changes in the rules, there must be an effective referee, a regulator. In this system of ours, we have to have effective regulation. And frankly, that has been lacking.

Mr. Pitt, who is the head of the SEC, I know has taken great exception to statements that have been made by my colleagues and myself. But the fact is that a system like this cannot work unless there is effective oversight and regulation, and that has been lacking.

Consider some of the statements that Mr. Pitt has made. This is Mr. Pitt speaking at the AICPA, which represents the accounting industry:

> For the past two decades, I have been privileged to represent this fine organization and each of the big five accounting firms that are among its members. Somewhere along the way, accountants became afraid to talk to the SEC. Those days are ended.

That was to the American Institute of Certified Public Accountants.

Then Mr. Pitt, who is, again, the head of the SEC, said:

> The agency I am privileged to lead has not, of late, always been a kinder and gentler place for accountants; and the audit profession, in turn, has not always had nice things to say about it.

So Mr. Pitt was concerned about ensuring a "kinder and gentler" SEC.

The New York Times did a story as a result of the initial speeches Mr. Pitt gave when coming to the SEC. It noted that Pitt "spoke favorably of pro forma earnings reports in ways that no doubt heartened accountants who have worked so hard to find ways to make even the worst profit figures look pretty."

It also noted that "A major embarrassment for accountants is having the SEC force a client to restate its numbers. Mr. Pitt and his chief accountant, Robert Herdman, are sending signals that fewer such demands will be made."

We can change the law, but if we do not have a tough, no-nonsense regulator, then it will not work.

We all watch basketball games, and we see referees. They are the ones who enforce the rules in basketball. We see a game from time to time where it is quite clear right at the start the referees are not going to call them close, and then pretty much it is "Katy bar the door," and things get out of hand. Then we see other games in which it is quite clear they are going to call up close, and nothing gets out of hand. The same is true with the attitude and mindset of Federal regulators. We have regulatory agencies for a purpose. That purpose is to enforce the rules. Fairly, yes, but also aggressively.

If someone who comes from that industry and says, I represented all of you, and suggests it will be a kinder and gentler place, I wonder whether that is the regulator we ought to have.

No matter who is heading the SEC, I want that person to be a fierce advocate on behalf of the rules that protect investors. I want someone that can make this system work and require everyone to own up to their responsibilities. So people who never enter a corporate office or know nothing about a corporation but who want to invest in American business, can buy a share of stock, having never met an officer of the company, having never visited the company, and can have confidence that what the accounting firm has said about that company, what the financial statements represent about that company, are absolutely fair and accurate.

That is the only way in which the American people can participate in the raising of capital for America's business. If we do not do that and do that quickly, we undermine the entire system by which we raise capital in this country. We undermine the entire system. That is why this piece of legislation is important and timely.

There are several amendments I would like to have considered, some I hope will be accepted, and some, perhaps, we will discuss at some length, and I may or may not prevail. There are some amendments that can strengthen and improve this legislation.

One of the provisions in the legislation calls for CEOs to return profits and bonuses they wrongfully reaped in the 12 months following a published earnings report that require a restatement. I would propose that this provision apply when a company goes bankrupt, as well. This idea has been endorsed by former SEC Chairman Richard Breeden, Goldman Sach CEO Henry Paulson, and others.

There also ought to be some provision with respect to loans to CEOs by corporate boards of directors. I don't know what that limit ought to be, but I mentioned one corporation where over $3 billion was loaned to one family of the founder. This is a publicly traded corporation. I believe we ought to discuss that.

I may offer a provision dealing with something called inversion, a mechanism whereby some American corporations have decided they want to renounce their American citizenship and move their

official headquarters to another country—Bermuda, for example. I want to be certain that CEOs of such companies cannot escape the requirement of this bill that they certify the accuracy of their financial statements. I do not think that, in addition to avoiding their fair share of U.S. taxes, these companies ought to be held to a lesser standard of reporting accuracy than U.S.-based firms. So I will offer an amendment, if needed, and visit with the chairman and the ranking member about that subject.

Another issue, one requiring disciplinary proceedings to be open to the public was discussed in committee. Transparency and having those hearings open to the public are important. I hope we can consider an amendment on that.

The other issue that was discussed in the committee at great length: What is the definition of the division of responsibilities between auditing and consulting? That definition, determined by the SEC or the Congress, is critical to determining whether there is a conflict.

Having said all that, let me say to the Senator from Maryland, we are in the Senate the first week after the Fourth of July. I listened to the Senators from Texas and Wyoming and Connecticut and others speak about this bill. This is a good start. If this legislation passed without one word changed, it would make a magnificent contribution to a problem we face, a gripping problem in this country.

Having said that, I do not subscribe to those on the committee who say not to change anything. That is not what the chairman said. There are some suggestions that will come from other parts of the Senate that can strengthen and improve this legislation, a couple of which I suggested. When it goes to conference with the House, we will have something we can be proud of.

The most important thing is to show to the investors in this country who have lost, in many cases, their life savings, that we are taking action to respond to the conditions that caused this to happen.

When we talk about the people at the top getting rich and the people at the bottom losing their life savings, the American people have every right to ask: By whose authority can this happen in this kind of economy? It cannot happen if the rules are fair. It cannot happen if the rules are enforced.

The American people have a right to expect the regulators, the SEC, and the Congress to take action now to address these issues.

I yield the floor.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I initially came to the floor to talk about this bill and another issue. The Water and Power Subcommittee of the Energy and Natural Resources Committee is holding a hearing on Wednesday, and I asked to testify about the views of Missouri on the Missouri River issue. Initially, the staff said I was not going to be able to testify, and I was going to therefore have to share my testimony with the entire body. However, I have now been advised by the chairman of the committee I will have an opportunity to testify, so I will save my comments for the committee hearing.

I thank the chairman for giving me that opportunity.

Mr. DORGAN. Will the Senator yield?

Mr. BOND. I am happy to yield.

Mr. DORGAN. Let me explain to the Senator what my hope was. The Senator asked to testify, quite properly. The Missouri River manual issue is a highly controversial issue. The Senator has been involved with it for some long while. We are having a hearings. The Corps of Engineers and many others are testifying. My hope had been we could hold a hearing with all of those groups, then have a separate meeting, hearing from all Members of Congress who want to testify. It appears that that will not be the case.

We will hear from Senators at the front end of that hearing. I assume it will take some time. As the Senator from Missouri knows, having indicated, yes, we would entertain his testimony, there are a number of other Senators who have already gotten in line saying, if that is the case, please hear my statement, as well. Of course we will.

It was never a case where we would not hear testimony. The question was whether we would have a separate hearing and hear Members of the Senate. I understand the Senator's concern. Senators Daschle, Johnson, Conrad, Carnahan, and many, many other Senators have great concerns about this issue.

I will lose some sleep Tuesday night with great anticipation hearing your testimony on Wednesday morning.

Mr. BOND. I thank my good friend from North Dakota and assure him I hope to be brief and to the point. I am somewhat disappointed I will not share all that testimony with my colleagues, but there will be another opportunity.

I thank the chairman of the subcommittee for his kind indulgence.

Today I rise to join in expressing my concern about recent accounting practices in publicly held companies and their auditors. As a former State auditor, I have an interest in that profession being performed properly. Obviously, something is seriously broken. We hear about Enron, Global Crossing, WorldCom, and Arthur Andersen. The people of America are very concerned. We have seen millions of families with their investments diminished or even wiped out. That is not acceptable. The vast majority of investments were not in the volatile sectors, or not what we thought were the volatile sectors of the stock market. They were invested in the so-called blue chip companies. The families who made those investments on their strong belief in the integrity of our financial markets and accounting industry now find that because of corporate shams, accounting gimmicks, and inadequate auditing, they have lost significantly the investments they planned for education or retirement—for their families.

As far as we know, overall the overwhelming majority of publicly traded companies are in full compliance with corporate accounting standards. But the fact that there has been a significant deception by a handful of companies raises suspicions of all companies. In addition, we don't know how many others will come forward in coming weeks.

We must restore the public's confidence in the market. Without this, the economic recovery which should be beginning will remain elusive.

While much of the focus in the debate here and in the news media is on the auditing problems of the big conglomerate companies, unfortunately little attention has been paid in this bill to how the impact will fall on small publicly traded companies and small auditing firms. As the ranking member on the Committee on Small Business and Entrepreneurship, I have some concerns, after reviewing this bill, that we may be pushing ahead without considering the serious effect and the unintended consequences the bill could have on smaller firms—both small auditing firms and small publicly traded companies.

The bill is clearly targeted towards abuses in extremely large businesses, which we all think should be dealt with. I personally hope it will result in prison sentences for people who are proven to have committed criminal acts in their accounting activities.

But the SEC is not even aware of how many small auditing firms there are auditing small, publicly traded companies. There are some 2,500 small companies, and we believe many of them are audited by small- and medium-size auditing firms. For small auditors, the bill will require many new elements including registration, annual filing requirements, as well as partnership rotation of lead auditors. In addition, the bill would codify a list of banned services or nonauditing services that an auditing company might conduct for a company that it audits.

While some of these elements clearly are necessary to restore confidence, and I think are going to be dealt with by regulatory action and maybe even by the industry itself, no one knows how these requirements will affect the small firms. It has been argued that the bill allows for a case-by-case exemption, but that exemption process itself could be extremely costly and untimely for small firms and lead to inconsistent results.

I fear that some of these small auditing firms will not have the resources to implement these requirements and will stop auditing services or just go out of business. The result may be that small, publicly traded companies may not be able to obtain auditing services at reasonable cost. As a result, the bill might be setting up a hurdle for small companies to reach the public markets, one that is too expensive and too great to overcome.

Clearly, when we deal with the major problems we ought not cause significant problems for the smaller, growing entrepreneurial sector of our country.

As for publicly traded companies, the bill also places new requirements for auditing committees and for corporate responsibility. Again, many of these may be necessary. However, we need to look at how these requirements will affect the small, publicly traded companies.

The entrepreneurial spirit of our country is really the envy of the world. People know that entrepreneurship works in America. That is where we get the new ideas. That is where we get the growth. That is where we get the new services and the products. We should be careful as we adopt reforms not to put a disproportionate bur-

den on these companies, dampening the entrepreneurial spirit or impeding access to the public markets.

I fully support accounting reform and the taking of steps necessary to restore investor confidence in the market. I think we should pass a balanced bill that will not overburden small firms and not create additional hurdles that will impede them from growing. We don't want an incidental consequence of this bill to be a monopoly of large accounting firms when it comes to corporate audits.

I agree with the other speakers that the American public is looking to us for answers. I intend to work to see that the needs of the small businesses, publicly traded small companies, and small auditing firms are protected. I am committed, and I think we all are committed, to restoring the public's confidence in the markets so families can feel safe once again in investing in America and in America's future.

I look forward to working with my colleagues to secure a balanced bill which will do that without bringing unnecessary hardship on the entrepreneurial sector of our economy.

I thank my colleague from Wyoming for the courtesy in allowing me to go ahead. I yield the floor.

Mr. ENZI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, during the course of the Fourth of July recess, I traveled through Pennsylvania holding some 16 town meetings, and I found many concerns among my constituents: The issue of prescription drugs; the concern about what is happening with respect to Iraq; the issue of terrorism, which confronts the United States; the concern about what might happen on July 4; concern about the suicide bombers from the Palestinians terrorizing Israel.

But high on the list of public concern was what has happened with Enron, WorldCom, and many other companies on the stock exchange, where so many of my constituents in Pennsylvania—like tens of millions of Americans, really, and even more—have had their savings decimated in their retirement accounts of a variety of sorts. The issue that was raised consistently was: What happens next?

I think it is very good that the Senate is now considering legislation to deal with the fraudulent conduct that has plagued so many companies in corporate America. There is no doubt that there is a clear-cut conflict of interest for an accounting firm to be both an adviser and an auditor. An adviser has a close relationship with a company—call it cozy, or intimate, or friendly—but that is very different from the function of an auditor, which ought to be at arm's length, scrutinizing what the company has done. That kind of a conflict should certainly be prohibited in the future. If the accounting firms do not have enough understanding of the ethics, then laws have to be enacted, with very tough penalties to follow. When you find companies having so much debt off the books, subsidiary corporations, that is a matter of fraud. Fraud is a misrepresentation of a fact where someone relies to their detriment, and that is a crime. When you have companies putting expenses in, say, a cap-

ital account that shows billions of dollars in additional income or assets of the corporation, that too is fraud.

A good part of my career has been as an assistant DA and then as district attorney. I believe this kind of white-collar crime is certainly susceptible of deterrence, providing that standards are established and penalties are provided for a breach. It is my hope that from the Senate's current consideration, some very tough legislation will follow.

(Mr. DAYTON assumed the Chair.)

Congressional Record
United States of America
PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, TUESDAY, JULY 9, 2002, NUMBER 91, PAGES [S6436–S6444]

Public Company Accounting Reform and Investor Protection Act of 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 4174

(Purpose: To provide for criminal prosecution of persons who alter or destroy evidence in Federal investigations or defraud investors of publicly traded securities, and for other purposes)

Mr. DASCHLE. Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. Daschle], for Mr. Leahy, for himself, Mr. McCain, Mr. Daschle, Mr. Durbin, Mr. Harkin, Mr. Cleland, Mr. Levin, Mr. Kennedy, Mr. Biden, Mr. Feingold, Mr. Miller, Mr. Edwards, Mrs. Boxer, Mr. Corzine, and Mr. Kerry, proposes an amendment numbered 4174.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DASCHLE. Madam President, on behalf of Senator Leahy and others, I offer this amendment which is identical to the Corporate and Criminal Fraud Accountability Act, S. 2010, passed unanimously by the Judiciary Committee some time ago.

I view the Leahy amendment as a necessary complement to the Sarbanes bill. In fact, I think of them as two parts of a vital whole—one element guarantees the truth and honesty of corporate accounting. The other is a deterrent. It says that corporate misrepresentation will be forcefully punished—with jail time.

We need both. We need to improve oversight and independence of the accounting profession and hold corporate wrongdoers accountable for their actions.

We need to act comprehensively to fulfill our promise to the American people that integrity, honesty, and accountability will be restored to our markets.

Last week Senator Leahy and I wrote to the President requesting his views on this bill and the Sarbanes accounting reform bill.

Unfortunately, the President has not answered our letter yet. But I hope to hear today—and I think we need to hear today—that he supports and will sign both.

We welcome the President's apparent new enthusiasm for reforming our corporate culture, and we look forward to working with him.

The Administration needs to understand that the time for half measures has long passed. The American people expect and deserve comprehensive reform.

Combining the Leahy bill and the Sarbanes bill accomplishes just that. The Sarbanes bill revamps the regulatory structure that protects our markets. There will be better rules and a new oversight body to send corporations and accountants a clear message that they must tell the truth on their balance sheets.

The Leahy bill is every bit as vital. Let me summarize a few of its provisions very quickly. The amendment has three aims: punishing criminals; preserving evidence; and protecting victims.

The Leahy amendment punishes criminals by creating a tough new 10-year felony for securities fraud. It provides prosecutors with a new tool that is flexible enough to keep up with the most complex new fraud schemes and tough enough to deter violations on the front end. It also provides a mechanism to raise the fraud sentences that are already on the books.

The amendment also preserves evidence of fraud. It creates two new criminal anti-shredding provisions in Federal law. As we say in the Arthur Andersen case, even the most straight-forward obstruction of justice cases can be difficult to prove under current law.

Senator Leahy's bill closes the loopholes and makes document destruction in fraud cases an unambiguous crime.

The amendment does not just protect "paper evidence," it also protects valuable testimony from people. For the first time, the Leahy bill creates Federal protection for whistleblowers. People like Sherron Watkins of Enron will be protected from reprisal for the first time under Federal law. This bill is going to help prosecutors gain important insider testimony on fraud and put a permanent dent in the "corporate code of silence."

Finally, the amendment will protect victims of fraud. By extending the time period during which victims can bring cases to recoup their losses, the Leahy bill removes the reward for those fraud artists who are especially gifted at concealing what they've done for lengthy periods of time.

Cases where victims have lost their entire life savings should be decided on the merits, not based on procedural hurdles that may now be used to throw legitimate victims out of court.

The Leahy bill also prevents fraud artists from declaring bankruptcy to shut out their victims. The amendment would accomplish this by making security fraud debts nondischargeable in bankruptcy.

Again, the Leahy provisions enjoyed broad bipartisan support in the Judiciary Committee when passed unanimously in April. They are needed now more than ever, as the number and magnitude of corporate misstatements continues to pile up and the lost jobs, lost pensions, and ruined lives continue to mount.

We must act to punish criminals, no matter what color their collar. I hope all Senators will support this amendment.

Madam President, the country will be listening intently to what the President says this morning. A crucial test will be whether he explicitly supports—and pledges to sign—the Sarbanes bill with the Leahy legislation attached. We cannot restore confidence in the integrity of our markets with anything else.

Senator Leahy is on the floor.

Mr. LEAHY. Will the majority leader yield?

Mr. DASCHLE. Yes.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I very much appreciate what my good friend, the distinguished majority leader, has said. I also compliment him for his leadership on corporate accountability. Sometime ago, he asked the Chairs of the various committees with possible jurisdiction in this area to get together and craft comprehensive legislation. I recall that meeting very well. I recall the majority leader—back at the time of Enron, before WorldCom and these other business scandals came forward—expressing his concern that not only is this a blight on the business community, it is a blight on our system of doing things. He also spoke about how terrible it was for those people, not only workers who had their pensions tied up in the fortunes of the companies they are working with and are relying on for truthfulness—what they assumed is the truthfulness—of the accounting statements of those companies, but also many other people who invest, whether it is a farmer in South Dakota or a merchant in a small town in Vermont who is putting savings in and hoping this will be part of his retirement.

The majority leader made it very clear to all of us that we were to set politics aside, we were to set any kind of special interests aside, and we were to bring up the best legislation possible for the people of America. That was what Senator Daschle charged us to do, and that is what I am trying to do with this amendment.

We have excellent accounting reform legislation, S. 2673, crafted by Chairman Sarbanes and the Senate Banking Committee. I commend Senator Sarbanes and the other members of the Banking Committee—for their bipartisan leadership. Senator Sarbanes had people on both sides of the aisle come out with this legislation, and I am proud to cosponsor it.

My amendment is to add to Senator Sarbanes' legislation, not to detract from it. As he knows, I offered to add a criminal penalty and other provisions that are within the jurisdiction of the Judiciary Committee.

My amendment is cosponsored by Senator McCain and the majority leader, Senators Durbin, Harkin, Cleland, Levin, Kennedy, Biden, Feingold, Miller, Edwards, Boxer, Corzine, Kerry, Schumer and Brownback. Our amendment is identical to S. 2010, the Corporate and Criminal Fraud Accountability Act that was reported unanimously by both Republicans and Democrats in the Judiciary Committee on April 25.

Again, following the very clear direction the distinguished majority leader gave us when he said we have to protect the people of this country, we have to make sure corporate America can do its best to help our economy, this would create tough new penalties for securities fraud and would preserve evidence of fraud to make sure there is accountability for crimes that not only cheat investors but rob the markets themselves of the public trust. The markets have stolen the public's trust.

According to press reports, President Bush has changed his mind on corporate reform and may support new penalties for corporate fraud, and I welcome the President's change of heart. The Corporate and Criminal Fraud Accountability Act creates tough, new, criminal penalties for corporate fraud, and Senator Daschle and I have written to the President asking for his support.

The time for watching and hand-wringing is over. We have to take action to start the slow but critical process of restoring confidence in the books of our publicly traded companies.

The collapse of Enron has become a symbol of a corporate culture where greed has been inflated and accountability devalued. Unfortunately, Enron is no longer alone. Joined by Arthur Andersen, Global Crossing, Tyco, Xerox, and, most recently, WorldCom, the misrepresentations about the financial health of our Nation's largest companies have shaken confidence in our financial markets.

If we do nothing to learn and apply the repeated lessons of the last months, we are only going to compound the problem. That was obviously the belief of the unanimous Judiciary Committee vote when the Committee approved S. 2010. Innocent consumers, investors, and employees depend on stock investments for their children's college funds, for their retirement nest eggs, and for their savings. Every week brings news of a new financial scandal. Just look at the effect on the stock market. It has been devastating. This has repercussions not just for companies that depend on our capital markets to grow their businesses and our economy, but certainly also for the average American family. More than one in every two Americans invest in our financial markets, and they are watching what we do here. They deserve action.

Those who defraud investors should be held accountable for their crimes. The Leahy-McCain amendment, the Corporate and Criminal Fraud Accountability Act, is all about accountability and transparency—two bedrocks of our market.

The PRESIDING OFFICER. The Chair states that the majority leader has yielded for a question only while retaining the floor. Is that the intent of the majority leader?

Mr. DASCHLE. Madam President, it was my intention to yield for a question, but I thank the distinguished Chair of the Judiciary Committee for his extraordinary leadership and the effort he has made to bring this legislation to the floor.

This is the Leahy amendment and, as I noted, it passed unanimously in large measure because I think he was able to work with our colleagues on both sides of the aisle.

I am happy to yield the floor so he and others may seek recognition.

Mr. LEAHY. My question would be this to the majority leader: Would he agree, in his experience, that nothing would focus the attention more of those executives who have defrauded their own companies and investors than the idea that they would actually go to jail for it, and not walk off with hundreds of millions of dollars?

Mr. DASCHLE. Madam President, it is for that reason that I believe this package ought to be viewed in its entirety. The Sarbanes bill lays out the framework. The Leahy bill lays out the penalties for violating that framework. So I don't know that you can have one without the other and not have a complete package.

So I appreciate very much the work of the Judiciary Committee, and the Chair of the Judiciary Committee especially, for the work in allowing this package to come to the floor. I thank him again for the contributions he made.

Several Senators addressed the Chair.

Mr. LEAHY. Madam President, I seek recognition in my own right.

The PRESIDING OFFICER. The Senator from Texas is recognized.

AMENDMENT NO. 4175 TO AMENDMENT NO. 4174

Mr. GRAMM. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

Mr. LEAHY. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. What is the rule on recognition? Is it not the Senator who seeks recognition first?

The PRESIDING OFFICER. The Chair understands that the managers of the amendment are entitled to be recognized.

Mr. LEAHY. On my amendment? May I be recognized on my own amendment which is pending before the Chair? Is that correct?

The PRESIDING OFFICER. The managers of the legislation have priority.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas, the manager of the underlying bill.

Mr. LEAHY. Would the managers of the amendment include the distinguished senior Senator from Kentucky? Is he one of the managers?

The PRESIDING OFFICER. The managers of the legislation are the Senator from Maryland and the Senator from Texas.

Mr. LEAHY. The distinguished Presiding Officer has recognized, however, the Senator from Kentucky.

The PRESIDING OFFICER. The Chair has recognized the Senator from Texas. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. Gramm], for Mr. McConnell, proposes an amendment numbered 4175 to amendment No. 4174.

Mr. GRAMM. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue.

The assistant legislative clerk continued with the reading of the amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I want to make sure people understand what the Leahy-McCain amendment is. I realize there may be those who want to amend it to make life easier.

The PRESIDING OFFICER. Will the Senator from Vermont suspend? The regular order is the reading of the amendment.

Mr. LEAHY. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection to calling off the reading of the amendment? Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for certification of financial reports by labor organizations and to improve quality and transparency in financial reporting and independent audits and accounting services for labor organizations)

At the end of the amendment add the following:

SEC. 302. CORPORATE AND LABOR ORGANIZATION RESPONSIBILITY FOR FINANCIAL REPORTS AND DISCLOSURE REQUIREMENTS.

(a) FINANCIAL REPORTS.—

(1) CERTIFICATION OF REPORTS.—

(A) CERTIFICATION OF PERIODIC REPORTS.—Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or the equivalent thereof) of the issuer.

(B) CERTIFICATION OF FINANCIAL REPORTS BY LABOR ORGANIZATIONS.—

(i) IN GENERAL.—Each financial report filed by a labor organization with the Secretary of Labor pursuant to section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 431(b)) shall be accompanied by a written statement by the president and secretary-treasurer (or the equivalent thereof) of the labor organization.

(ii) DEFINITION.—In this subparagraph, the term "labor organization" has the meaning given the term in section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402).

(2) CONTENT.—The statement required by paragraph (1) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer or labor organization.

(3) CONFORMING AMENDMENT.—Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959 is amended, in the matter preceding paragraph (1), by inserting "(and accompanied by the statement described in section 302(a)(1)(B) of the Public Company Accounting Reform and Investor Protection Act of 2002)" after "officers".

(b) REPORTING REQUIREMENTS.—

(1) FINANCIAL REPORTING FOR LABOR ORGANIZATIONS EQUIVALENT TO REQUIRED REPORTING OF PUBLIC COMPANIES.—Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 431) is amended by adding at the end the following:

"(d)(1) In the case of a labor organization with gross annual receipts for the fiscal year in an amount equal to $200,000 or more, the information required under this section shall be reported using financial reporting procedures comparable to procedures required for periodic and annual reports of public companies pursuant to sec-

tions 12(g), 13, and 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78*l*(g), 78m, and 78*o*).

"(2)(A) Such information shall be reviewed by a certified public accountant using generally accepted auditing standards applicable to reporting companies under the Securities and Exchange Act of 1934.

"(B) Such audit shall be conducted subject to requirements comparable to the requirements under section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1).

"(3) Such information shall be reported using generally accepted accounting procedures comparable to the procedures required for public companies under sections 12(g), 13, and 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78*l*(g), 78m, and 78*o*).

"(4) The authority provided under this subsection shall be in addition to the authority provided under subsection (b) and section 208, regarding reporting procedures and review of information required under this section.".

(2) REMEDIES AND PENALTIES FOR VIOLATIONS OF REPORTING REQUIREMENTS.—Section 210 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 440) is amended—

(A) by striking "Whenever" and inserting "(a) Whenever"; and

(B) by adding at the end the following:

"(b)(1) If the Secretary finds, on the record after notice and opportunity for hearing, that any person has willfully violated any provision of section 201(d), the Secretary may impose a civil monetary penalty in an amount not to exceed the amount for any comparable violation under section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2).

"(2) In the case of a violation of an auditing requirement under section 201(d)(2) by a public accountant, the Secretary may impose a civil monetary penalty in the same manner as penalties are imposed under section 10A(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(d)).

"(3) For purposes of any action brought by the Secretary under paragraph (1), any person who knowingly provides substantial assistance to another person in violation of a provision of section 201(d), or of any rule or regulation issued under such section (including aiding, abetting, counseling, commanding, or inducing such violation) shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

"(c)(1) Any person who makes or causes to be made any statement in any report or document required to be filed under section 201(d) which statement was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who relied upon such statement. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction.

"(2) In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

"(3) The recovery and statute of limitation provisions of subsections (b) and (c) of section 18 of the Securities Exchange Act of 1934 (15 U.S.C. 78r) shall apply for purposes of any action under this subsection.

"(d) In any action arising under subsection (c) or (d) or in connection with any provision of section 201(d), the provisions of section 27(c) of the Securities Act of 1933 (15 U.S.C. 77z-1(c)) regarding abusive litigation shall apply.".

(3) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor, shall promulgate such regulations as the Secretary determines necessary to carry out the provisions and purposes of this subsection (including the amendments made by this subsection) and to ensure the provisions of this subsection are carried out in a manner comparable to the manner any similar provisions are carried out by the Securities and Exchange Commission.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, so people understand what the Leahy-McCain amendment is, it is the Corporate and Criminal Accountability Act. It is about accountability, and it is about transparency. I think everybody—investors, corporate managers, or anybody else—will tell you that accountability and transparency are the bedrock of our economy, of our markets.

If one is going to invest in a company, one wants to know what the company does and what the books say. One wants to be able to rely upon their reports.

Transparency will instill confidence, and accountability helps enforce transparency and forthright financial decisions. We do not just rely on the better angels of our nature; we rely on the fact that somebody is going to be there to enforce it.

We cannot stop greed, but we can stop greed from succeeding. This bipartisan amendment is going to send wrongdoers to jail and save documents from the shredder, and that sends a powerful and clear message to potential wrongdoers: Don't do it.

The measure enjoys wide support. The amendment is supported by law enforcement officials, regulators, and numerous whistleblowers, and consumer protection advocates. I have letters of support from these advocates, and I will, at the end of my statement, ask consent to print them in the RECORD.

Let me summarize some of the provisions. This bipartisan amendment has three prongs to restore accountability: punishing and preventing fraud, preserving the evidence of fraud, and protecting victims of fraud.

S. 2010, as unanimously reported, accomplishes these goals in a number of ways. It is going to create a tough new Federal felony for securities fraud for a 10-year maximum penalty. The idea of 10 years in the slammer is going to focus the attention of those who are more interested in taking their money and hiding it in offshore bank accounts.

As one who was a prosecutor, I was surprised to learn that unlike bank fraud, health care fraud, and even bankruptcy fraud, there is no specific Federal crime of securities fraud to protect victims of fraud related to publicly traded companies.

Can you imagine, Madam President, while all this talk has been going on, it turns out there is no specific crime of securities fraud. This bill would create such a felony with a tough 10-year jail sentence.

The amendment provides for a review of the existing sentencing guidelines for fraud cases and for organizational misconduct to make them tougher as well.

The new crimes and enhanced criminal penalties in this bill were worked out among Senators Hatch, Schumer, and me, and unanimously supported by the Judiciary Committee, and I thank Senators Hatch and Schumer for their support.

The Leahy-McCain amendment also creates two new anti-shredding penalties which set clear requirements for preserving financial audit guides and close loopholes in current anti-shredding laws.

These provisions close loopholes in current laws and set a clear requirement that corporate audit documents must be saved for 5 years. We, incidentally, picked that time period because that is the statute of limitation for most Federal crimes.

These provisions are crucial in preventing recurrences of what happened at Arthur Andersen.

These provisions will preserve evidence that helps law enforcement officers and prosecutors focus immediately on the evidence. It takes a few minutes to warm up the shredder, but it can take years

for prosecutors and victims to put together a case without key documents.

The amendment protects corporate whistleblowers. Senator Grassley and I worked out these bipartisan measures in the Judiciary Committee. I thank the Senator from Iowa for his assistance and his constant leadership over the years on whistleblower rights.

When sophisticated corporations set up complex fraud schemes, corporate insiders are often the only ones who can disclose what happened and why.

Unfortunately, the Enron case also demonstrates the vulnerability of corporate whistleblowers to retaliation under current law. This is a memo from outside counsel to Enron management. They were afraid there might be a whistleblower. It said:

> You also asked that I include in this communication a summary of the possible risks associated with discharging (or constructively discharging) employees who report allegations of improper accounting practices.

Then he goes on to give them the good news:

> Texas law does not currently protect corporate whistleblowers. The supreme court has twice declined to create a cause of action for whistleblowers who are discharged. . . .

In other words, if they dare tell about corporate misdeeds, fire them, it is not going to hurt.

After this high-level employee of Enron reported improper accounting practices, the Enron executives were not thinking about firing the accountants who were doing wrong; they wanted to fire the whistleblower, their own employee. Why? Because they were pocketing the money. They were getting that money out to their bank accounts as fast as they could, and they did not want anybody to say so.

The bipartisan whistleblower protections are supported by the national Whistleblower Center, the Government Accountability Project, and Taxpayers Against Fraud. They call S. 2010 "the single most effective measure possible to prevent further recurrences. . . . "

The measure lengthens the statute of limitation by extending it from the earlier of 1 year from discovery or 3 years from the fraud to 2 years from discovery or 5 years from the fraud.

Senators Feinstein and Cantwell worked hard to craft a fair compromise on this provision in the Judiciary Committee.

Indeed, the last two SEC Chairmen from both parties, Arthur Levitt and Richard Breeden, both agreed that the current short statute of limitations is unfair to fraud victims.

Attorney General Christine Gregoire testified before the Judiciary Committee in the Enron State pension fund litigation that the current short statute has forced some States to forego claims against Enron.

In Washington State alone, the short statute of limitations could cost hard-working State employees—firefighters and police officers—nearly $50 million in lost Enron investments.

Last week, Xerox announced it was restating its revenue back 5 years by $6.4 billion. Madam President, as a law student, I remember sitting in the gallery listening to the distinguished Senator from Illinois, Mr. Dirksen, give his well-known speech: "A billion here and a billion there, and soon you're talking about real money."

Imagine a corporation claiming they made a mistake in their revenue of $6.4 billion for the past 5 years. The disclosures raise the specter of innocent investors who, through no fault of their own, will be barred from recouping losses.

We make the debt from security law violations nondischargeable in bankruptcy. We protect fraud victims by amending the bankruptcy code to make judgments and settlements based upon security law violations nondischargeable. Corporate leaders should not be allowed to take the money, run, file bankruptcy, and keep from ever paying any securities fraud judgment. The State security regulators strongly support this change. You cannot have one set of rules which say if you steal $500 from a store, you can go to jail. But if you steal $50 million from the corporate boardroom, keep the money. That makes no sense. Everywhere I went in the State of Vermont last week, people were saying: If I committed an act, if I stole something, if I cash a bad check for $100, I run the risk of going to jail.

But what do you do if you get $50 million or $100 million? You are home free.

Criminal conduct deserves criminal penalties. Corporate CEOs who rob their company, who rob the pension funds of their employees, who rob the trust of the American people, are criminals. They ought to go to jail.

The steel bars, maybe that will give a conscience to some of these people like Kenneth Lay and others who obviously do not have one. This gives prosecutors, the investigators, and victims the tools to hold corporate wrongdoers accountable.

The people who are involved in such massive criminal activity ought to pay. The American people ought to know they will have to pay. If they don't, there will be a whole lot more fraud.

I ask unanimous consent to have a number of letters printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

TAXPAYERS AGAINST FRAUD,
Washington, DC.

GOVERNMENT ACCOUNTABILITY PROJECT,
Washington, DC, July 5, 2002.

DEAR SENATOR: The Government Accountability Project (GAP) and the Taxpayers Against Fraud (TAF) reaffirm our support for the Leahy Corporate and Criminal Fraud Accountability amendment to S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

Initially introduced as S. 2010, the Corporate and Criminal Fraud Accountability Act, was unanimously reported by the Senate Judiciary Committee on May 6, 2002. This amendment is a landmark proposal. It promises to make whistleblower protection the rule rather than the exception for those challenging betrayals of corporate fiduciary duty enforced by the Securities and Exchange Commission. It would be the single most effective measure to prevent recurrences of the Enron and Worldcom debacles as well as similar threats to the Nation's financial markets, shareholders and pension holders.

GAP is a nonprofit, nonpartisan public interest law firm dedicate since 1976 to helping whistleblowers, those employees who exercise freedom of speech to bear witness against betrayals of public trust that they discover on the job. GAP has led the campaign for passage of nearly all Federal whistleblower laws over the last two decades. TAF is a nonprofit, nonpartisan public interest organization dedicated to combating fraud against the Federal Government through promotion and use of the Federal False Claims Act and its qui tam whistleblower provisions. TAF supports effective anti-fraud legislation at the Federal and state level.

The Leahy amendment to S. 2673 is outstanding good government legislation. It closes the loopholes that have meant whistleblowers proceed at their own risk when warning Congress, shareholders, and their own management's Board Audit Committees of financial misconduct threatening the health of their own company, investor confidence and the Nation's economy. We hope we can count on your support to add this state of the art whistleblower protection system in S. 2673. If you have any questions regarding the Leahy amendment, please call Tom Devine at GAP (202-408-0034 ext. 124), or Doug Hartnett (ext. 136).

Sincerely,

JIM MOORMAN,
Executive Director, TAF.
TOM DEVINE,
Legal Director, GAP.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATIONS, INC.,
Washington, DC, July 5, 2002.

HON. PATRICK LEAHY,
Washington, DC.

DEAR SENATOR LEAHY: NASAA supports S. 2673, The Public Company Accounting Reform and Investor Protection Act of 2002, and opposes efforts to weaken its provisions. State securities regulators believe there is an immediate need to restore investor confidence in our securities markets.

Passage of the Leahy amendment, which incorporates S. 2010, the Corporate and Criminal Fraud and Accountability Act of 2002, into the accounting reform bill would send a strong deterrent message to potential securities violators by providing prosecutors with new and better tools to punish those who defraud our Nation's investors. Our focus is on Section 4, which would prevent the discharge of certain debts in bankruptcy proceedings. At the present time, the bankruptcy code enables defendants who are guilty of fraud and other securities violations to thwart enforcement of the judgments and other awards that are issued in these cases.

We support passage of the Leahy amendment because it strengthens the ability of regulators and individual investors to prevent the discharge of certain debts and hold defendants financially responsible for violations of securities laws. This issue is of great interest to State securities regulators, and we hope you'll support it on the Senate floor.

In addition, State securities regulators enclose Title V of S. 2673—Analyst Conflicts of Interest—in its current form and strongly oppose any amendment to this title that would reduce our ability to investigate wrongdoing and take appropriate enforcement actions against securities analysts. An amendment drafted by Morgan Stanley was circulated that, we believe, would have prohibited State securities regulators from imposing remedies upon firms that committed fraud, if it involved securities analysts and perhaps even broker-dealers that deal with individual investors. Clearly this approach is ill-advised, especially in today's climate. What message would be sent to Main Street investors if the States' investigative and enforcement authority were weakened? (Additional information on this proposal was delivered to your office last week.)

Please vote for passage of S. 2673, for the Leahy amendment, and against any amendments to curtail State securities enforcement actions.

Sincerely,

JOSEPH P. BORG,
NASAA President, Alabama Securities Director.
CHRISTINE A. BRUENN,
NASAA President-elect, Maine Securities Administrator.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATION,
Washington, DC, April 17, 2002.

HON. PATRICK LEAHY,
Senate Judiciary Committee, Washington, DC.
Legislative Alert!

DEAR SENATOR LEAHY: The sudden and spectacular collapse of Enron has jeopardized the retirement security of millions of hardworking Americans and exposed sys-

temic failures of our securities laws. If we are to prevent future Enrons and restore the credibility of America's capital markets, aggressive reform is required. This week the Judiciary Committee will markup S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002, which is an important part of this effort and deserves your support.

The measures embodied in S. 2010 will help protect working families and their retirement funds from future Enrons by strengthening the penalties for securities and accounting fraud, and destruction of audit papers. The bill provides strong civil and criminal penalties for conduct such as document shredding by auditors and conspiracies to defraud investors; and bars those who commit securities fraud from using the bankruptcy system to avoid compensating the victims of such fraud. It also lengthens the statute of limitations for civil lawsuits by the victims of securities fraud, making it more difficult for those who commit these crimes to escape having to compensate their victims.

S. 2010 is an important part of the comprehensive reforms Congress needs to enact in response to the conflicts in the capital markets exposed by the collapse of Enron. The AFL–CIO urges you to support S. 2010 at this week's Judiciary Committee markup.

Sincerely,

WILLIAM SAMUEL
Director, Department of Legislation.

CONSUMERS UNION,
Washington, DC.

Re Support for S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002

CONSUMER FEDERATION OF AMERICA,
Washington, DC, April 16, 2002.

DEAR SENATOR: Consumers Union and the Consumer Federation of America urge your support for S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002, sponsored by Senator Patrick Leahy, when it comes before the Judiciary Committee for markup on Thursday. This proposal adds important provisions to the civil and criminal laws, which will both, deter and when necessary, punish securities fraud.

ENHANCING ENFORCEMENT AND SANCTIONS FOR SECURITIES FRAUD

S. 2010 takes the following important steps to strengthen enforcement and penalties for securities fraud:

It creates a new felony for the act of defrauding shareholders of publicly traded companies.

It creates a new felony for destruction of evidence or creation of evidence with intent to obstruct a Federal agency or criminal investigation.

It provides whistleblower protection to employees of publicly traded companies when they act lawfully to disclose information about fraudulent activities within their company.

It enhances the ability of State attorneys general and the SEC to use civil RICO to enforce existing law; currently only the U.S. Attorney General has such authority currently under RICO.

ADOPTING A REALISTIC STATUTE OF LIMITATIONS

S. 2010 also increases the ability of defrauded investors to recover their losses by lengthening the statute of limitations. The bill would set the statute of limitations to the earlier of 5 years after the date of the fraud or 3 years after the fraud was discovered.

The current statute of limitations, the result of a 5–4 vote in a 1991 Supreme Court decision, sets up an unrealistically short timetable for bringing private suits and needs to be corrected. Former President Bush's SEC Chairman Richard Breeden, former President Clinton's SEC Chairman Arthur Levitt, and State securities regulators have all supported an extension of the statute of limitations.

Suits by defrauded investors have long been recognized by securities regulators, including former SEC Chairman Levitt, as an important deterrent against fraud. Moreover, securities fraud is often well-concealed and not readily apparent to investors until, in some cases, years after the fraud has been committed. As Chairman Levitt testified in 1995 before the Senate Banking Committee, "Extending the statute of limitations is warranted because many securities frauds are inherently com-

plex, and the law should not reward the perpetrator of a fraud who successfully conceals its existence for more than 3 years."

Justices O'Connor and Kennedy, in their vigorous dissent in the 1991 Supreme Court case, also supported a longer statute of limitations. Justice Kennedy wrote, "The most extensive and corrupt schemes may not be discovered within the time allowed for bringing an express cause of action under the 1934 Act. Ponzi schemes, for example, can maintain the illusion of a profit-making enterprise for years, and sophisticated investors may not be able to discover the fraud until long after its perpetration . . . By adoption of a 3 year period of response, the Court makes a 10(b) action all but a dead letter for many injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within 3 years after the violation occurred. In so doing, the Court also turns its back on the almost uniform rule rejecting short periods of response for fraud-based actions."

Indeed, some States' pension funds may have to forego claims against Enron for securities fraud that occurred in the late 1990s because of this short statute of limitations. Washington State's Attorney General discussed this problem when she testified before your Committee in February of this year. "In fact, for Washington State, our claim in the [Enron] case is for approximately $50 million, when in fact our losses are in excess of $100 million. But because of the statute of limitations, we're not able to make that claim." (underlining added).

The current statute of limitations rewards those who are able to conceal their fraud for a relatively short time with immunity from private liability. It also includes a limit of 1 year from the time of discovery, which encourages a rush to the courthouse.

The criminal conduct surrounding the collapse of Enron, and the fact that many claims for fraud will be time-barred by the current short statute of limitations, have drawn attention to the need for reform. S. 2010 includes important investor protection measures. We urge your support for this bill in the Judiciary Committee April 18.

Sincerely,

SALLY GREENBERG,
Senior Counsel.
TRAVIS PLUNKETT,
Legislative Director.

U.S. PUBLIC INTEREST RESEARCH GROUP,
Washington, DC, April 17, 2002.

No More Enrons—Support S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002

DEAR MEMBER OF THE SENATE JUDICIARY COMMITTEE: We are writing on behalf of the members of State Public Interest Research Groups to urge your strong support for S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002, sponsored by Senator Patrick Leahy, when it comes before the Judiciary Committee for markup on Tuesday. This proposal adds important provisions to the civil and criminal law to both deter and, when necessary, punish securities fraud. Please oppose weakening amendments.

S. 2010 takes the following important steps to strengthen enforcement and penalties for securities fraud:

It creates a new felony for the act of defrauding shareholders of publicly traded companies.

It creates a new felony for destruction of evidence or creation of evidence with intent to obstruct a Federal agency or criminal investigation.

It provides whistleblower protection to employees of publicly traded companies when they act lawfully to disclose information about fraudulent activities within their company.

It enhances the ability of State attorneys general and the SEC to use civil RICO to enforce existing law; currently only the U.S. Attorney General has such authority currently under RICO.

Importantly, S. 2010 also increases the ability of defrauded investors to recover their losses by lengthening the statute of limitations. The bill would reasonably and sensibly set the statute of limitations to the earlier of 5 years after the date the fraud occurred or 3 years after the fraud was discovered. A securities law violation is often a complex, multi-year enterprise. Indeed, Enron's recent accounting restatements went back 5 years. Under the fraudster-friendly current law, some state pension fund claims against Enron may be time-barred.

S. 2010 includes numerous important investor protection measures to assist whistleblowers, fraud victims, and law enforcement agencies. We urge your strong support for this bill to help restore investor confidence in the Judiciary Committee April 18. Please oppose weakening amendments. For more information about the full State PIRG platform to protect employees, investors and taxpayers from future Enron/Andersen debacles, please visit http://www.enronwatchdog.org. Please contact me with questions at either 202-546-9707x314 or ed@pirg.org.

Sincerely,

EDMUND MIERZWINSKI,
Consumer Program Director.

NATIONAL WHISTLEBLOWER CENTER,
Washington, DC, April 17, 2002.

HON. MARIA CANTWELL,
Senate Judiciary Committee, Washington, DC.

DEAR SENATOR CANTWELL: The National Whistleblower Center strongly supports S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002. This law would protect employees who disclose Enron-related fraud to the appropriate authorities.

One of the most notorious loopholes in current whistleblower protection law exists under the securities laws, in which employees who report fraud against stockholders have no protection under Federal law. It is truly tragic that employees who are wrongfully discharged merely for reporting violations of law, which may threaten the integrity of pension funds or education-based savings accounts, have no Federal protection.

This point was made abundantly clear by the recently released internal memorandum from attorneys for Enron. According to Enron's own counsel, employees who were blowing the whistle on Enron's misconduct were not protected under Federal law, and could be subject to termination. Unfortunately, the Enron attorney was correct.

It is imperative that the next time a company like Enron seeks advice from counsel as to whether they can fire an employee, like Sharon Watkins (who merely disclosed potential fraud on shareholders), the answer must be a resounding "no." That can only happen if the Corporate and Criminal Fraud Accountability Act is enacted into law.

Respectfully submitted,

KRIS J. KOLESNIK,
Executive Director.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, July 3, 2002.

DEAR SENATOR: It has come to my attention that the substance of S. 2010, the Corporation and Criminal Fraud Accountability Act of 2002, will be offered as an amendment to S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, as early as next week.

I have attached a letter to Senator Leahy from seven Attorneys General written last April in support of the substance of S. 2010, in order to make these views known as you consider this legislation.

If you have any questions or concerns, please feel free to call Blair Tinkle, NAAG's Legislative Director at 202–326–6258.

Sincerely,

LYNNE ROSS,
Executive Director.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, April 17, 2002.

HON. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: We would like to take this opportunity to express our support for your bill, S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002, which is pending before the Senate.

As you know, the proposal would allow state Attorney's General to seek to enjoin racketeering activities under the Federal RICO statute. Such added authority would enhance the ability of Attorneys General to protect their citizens from unlawful activities by organizations both within and outside the borders of our individual states.

In addition, to restore accountability, S. 2010 provides prosecutors new and better tools to effectively prosecute and punish criminals who defraud investors by:

Creating a new, 10-year felony specifically aimed at securities fraud.

Enhancing fraud and obstruction of justice statutes where evidence is destroyed and in fraud cases, where there are many victims or where any victim is financially devastated.

Creating two new document destruction felonies establishing a new felony shredding crime and requiring the preservation of audit documents for 5 years.

Creating new protections for corporate whistleblowers.

Finally, the bill protects victims' rights by:

Protecting securities fraud victims from discharge of their debts in bankruptcy.

Extending the statute of limitations in securities fraud cases.

We appreciate your efforts to enact this important legislation. Please feel free to contact us if we can provide further assistance in this effort.

Sincerely,

Carla J. Stovall, Attorney General of Kansas, President of NAAG; Hardyress, Attorney General of Oregon, Chairman, Enron Bankruptcy Working Group; Christine Gregsire, Attorney General of Washington; William H. Sorrell, Attorney General of Vermont; Ms. Edmonds, Attorney General of Oklahoma, President-Elect of NAAG; Thurbert E. Baker, Attorney General of Georgia; Betty D. Montgomery, Attorney General of Ohio.

Mr. LEAHY. I appreciate the distinguished majority leader introducing this amendment and yielding to me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. I was going to send an amendment to the desk but I understand there is one pending. I ask unanimous consent I have up to 8 minutes to discuss this amendment now, which I will send later.

Mr. MCCONNELL. Reserving the right to object, and I probably will not, I hoped for an opportunity to briefly explain the second-degree amendment that is pending at the desk. If the Senator thinks it might be helpful just to determine the order of discussion, perhaps it is more appropriate to discuss the amendment that is pending over one that might have been pending.

Mr. MILLER. The Senator from Kentucky is correct. I would like to get in the queue somewhere along the line.

Mr. REID. I ask the question of the Senator from Kentucky, How long does the Senator from Kentucky wish to speak?

Mr. MCCONNELL. I will be happy to wrap up in 5 or 6 minutes. I want to summarize what the amendment is about.

Mr. SARBANES. Madam President, I ask unanimous consent the Senator from Kentucky be recognized for 5 minutes to speak to the second-degree amendment that has been offered, that is pending, and that be followed by the Senator from Georgia to speak for 8 minutes.

Mr. MURKOWSKI. Madam President, I wonder if I may be recognized after the sequence that has been discussed for about 1 minute.

Mr. REID. I object.

The PRESIDING OFFICER. Is there an objection to the original request of the Senator from Maryland?

Mr. REID. I do not object to the original 13 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kentucky will proceed.

Mr. MCCONNELL. I thank my friend from Georgia. I will briefly discuss the second-degree amendment. I expect to vote for the underlying bill, but we ought to, in the name of equity, apply the same principles in the underlying bill we are seeking to apply to corporations to labor unions.

The amendment I sent to the desk requires union financial statements to be audited by an independent accountant using procedures that mirror those of public companies under Federal securities laws. It imposes civil penalties for violations of these new auditing requirements that mirror those imposed on the Security Exchange Act of 1934. Third, it requires that the Union President and Secretary-Treasurer certify the accuracy of financial reports, mirroring a similar requirement for CEOs and CFOs in the Sarbanes bill.

We are debating how to better oversee and enforce the audit requirements for large corporations that were first established under the Securities Act of 1933. It may shock many to learn that labor unions are not even required to have independent audits of the financial statements they file with the Department of Labor—or should I say that they are required to file. Many unions apparently thumb their nose at the requirement. A study by the Office of Labor Management Standards found that 34 percent of all unions filed late financial reports or no reports at all.

If we are serious about protecting the investing public from the financial fraud of corporations and accountants, we should be equally serious about protecting the day-to-day American worker—the plumbers, the machinists, the longshoremen, and the steelworkers—from the financial fraud of union officials.

One prominent union official recently said that:

> Over the coming months you will no doubt hear more about the Enron scandal and the many thousands of people who have lost their pensions because of corporate greed.

I agree with that. What we do not hear enough of are the stories of union greed. It is only fair to share some of them today. I have a rather long list I will discuss later in the debate, but let me cover a few of them in my allotted time. We have heard of Arthur Andersen, but has anyone heard of Thomas Havey? That is the accounting firm where a partner confessed to helping a bookkeeper conceal the embezzlement of hundreds of thousands of dollars from a worker training fund of the International Association of Ironworkers. And in an eerie parallel to the Enron scandal, the Havey accountants revealed startling information—10 years ago, the then General Counsel for the Ironworkers Union said that if the accounting firm refused to assist in the union scheme to conceal financial mismanagement, the accounting firm should be fired. Sadly, the accounting firm complied.

We have all heard of Global Crossing, but has anyone heard of ULLICO? That is the multibillion-dollar insurance company owned primarily by unions and their members' pension funds that invested $7.6 million in Global Crossing. Apparently, ULLICO directors received a sweetheart investment deal that allowed them to make millions on the sale of stock. The union pension funds, however, dried up with Global Crossing's demise.

There is much more. An accountant within the National Association of Letter Carriers embezzled more than $3.2 million from union funds over an 8 year period to buy 8 cars, 2 boats, 3 jet skis, a riding mower, and 105 collectable dolls. A former official of the Laborers' Union District Council in Oregon, Idaho, and Wyoming is in jail for accepting hundreds of thousands of dollars in kickbacks for directing money into a ponzi-like investment scheme that defrauded Oregon labor unions of $355 million.

I have a number of additional examples that I wish to get to later, but I do want to say in summary, again, what my amendment is about, just so everyone will understand as we move subsequently to a vote. It first requires union financial statements to be audited by an independent accountant using procedures that mirror those of public companies under the Federal securities laws; second, it imposes civil penalties for violations of these new auditing requirements that mirror those imposed under the Securities Exchange Act of 1934; and, third and finally, it requires that the Union President and Secretary-Treasurer certify the accuracy of their financial reports, which mirrors a similar requirement for CEOs and CFOs in the Sarbanes bill.

I yield the floor.

Mr. SARBANES. Will the Senator yield for a question?

Mr. MCCONNELL. Yes.

Mr. SARBANES. Of course, there is a special statutory arrangement that governs labor organizations. I take it this proposal—has this come to us from the Department of Labor?

Mr. MCCONNELL. I say to the Senator from Maryland, it did not come from the Department of Labor. It came from my office. This is something we have been looking at over the last week or 10 days, thinking that, since the very worthwhile requirements of corporations and accounting firms, under the bill of the Senator from Maryland, make sense if we are looking to protect investors, we should also protect union members from similar kinds of casual exploitation.

Mr. SARBANES. But under the Labor Management Reporting and Disclosure Act, the Department has certain authorities it can invoke in dealing with the kind of problems the Senator has outlined. At least that is my understanding under the current state of the law. Is that correct?

Mr. MCCONNELL. I don't know what the position of the Department of Labor is on the amendment I am offering. But it is my belief that if the amendment were not necessary, we would not be offering it here today. This is something I am sure we are going to discuss further as we move along.

Mr. SARBANES. I am sure the Senator would be able to find out from the Secretary.

Mr. MCCONNELL. I expect I could find out from the Secretary of Labor, but I chose not to do that.

Mr. GRAMM. I don't know whether you could or not.

Mr. MCCONNELL. She has her job and I have mine.

AMENDMENT NO. 4176

The PRESIDING OFFICER. The Senator from Georgia is recognized under the previous order.

Mr. MILLER. Madam President, I ask unanimous consent the pending amendment be temporarily set aside so I be allowed to offer an amendment.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Georgia [Mr. Miller] proposes an amendment numbered 4176.

Mr. MILLER. Madam President, I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to require the signing of corporate tax returns by the chief executive officer of the corporation)

At the end add the following new title:

TITLE VIII—CORPORATE TAX RETURNS

SEC. 801. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 of the Internal Revenue Code of 1986 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: "The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation.".

(b) EXECUTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

Mr. GRAMM. Will the Senator yield?

There is a little bit of confusion. I want to be sure he is setting aside the entire amendment, the Leahy and the McConnell amendment, and he is offering a first-degree amendment? That is what I understood when I talked to the Senator and to what I had agreed.

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. SARBANES. No. What was the request? I thought the unanimous consent request was to set aside the McConnell amendment and offer the Miller amendment to the Leahy amendment.

Mr. GRAMM. It was the pending amendment.

Madam President, I wanted to be sure that we set aside both Leahy and McConnell. This is a new issue, a first-degree amendment. That was the basis that I understood it on and on the basis of that I had no objection to it.

The PRESIDING OFFICER. The Chair understands the Senator from Georgia was going to offer an amendment that would be considered at a different time, an independent first-degree amendment, to be spoken about now and considered at a later time. Is that the understanding of the Senator from Vermont?

Mr. LEAHY. Reserving the right to object, I want to make sure I fully understand. What is the request?

The PRESIDING OFFICER. There is no request pending.

Mr. LEAHY. I am sorry. I thought there was a request to lay aside my amendment.

The PRESIDING OFFICER. That request has been granted.

Mr. LEAHY. But then my—what is the parliamentary situation with my amendment? Maybe that is the best way to ask it.

The PRESIDING OFFICER. The Senator from Georgia obtained the consent to set aside the pending amendment in order to offer a first-degree amendment.

Mr. LEAHY. I understand.

Mr. SARBANES. Would the call for the regular order at the completion of the statement of the Senator from Georgia, or disposition of his amendment, bring back before the body the Leahy amendment?

The PRESIDING OFFICER. Yes, it would.

Mr. LEAHY. The Senator from Georgia spoke to me earlier. I do not want in any way to interfere with that. I do want to accommodate him. I just wanted to make sure, also for my own schedule, where we stood.

I thank the distinguished Presiding Officer and I thank the distinguished Chairman of the Committee and of course I thank the distinguished Senator from Georgia.

Mr. MILLER. I thank the Senator from Vermont and the Senator from Texas.

Madam President, there is a good old boy from down in Georgia named Jerry Reed, who went to Nashville several years ago and made it big as a tremendous guitar picker, singer, and songwriter. He had a big hit a while back. Maybe some of you remember it. It was called "She Got the Gold Mine and I Got the Shaft."

I thought about that song of Jerry Reed's as I watched what has happened lately on the corporate scene. The big shots of Enron and WorldCom and others, they got the gold mine while the poor employees and the innocent stockholders got the shaft.

If a picture is worth a thousand words, take a look at this gold mine. It was built partly on the backs of those Georgia schoolteachers who, each month, put their hard-earned money into the Georgia teachers' retirement fund. The fund in Georgia lost $78 million from Enron and another $6 million from WorldCom. Think how many monthly contributions by how many struggling teachers that represents. And think about those other thousands of employees who have lost their life savings, not even to mention the thousands of employees who have lost their jobs—at least 450 jobs were wiped out in Georgia alone so far.

Yes, a few big shots got the gold mine and a lot of little folks got the shaft.

I am as probusiness as anyone in this body. I yield to no officeholder when it comes to supporting business issues. As Governor and Senator, I have worked to give tax cuts and tax incentives and pay for the training of their employees—all to provide a probusiness environment in which the entrepreneurial spirit can thrive and prosper and create jobs. But, folks, there comes a time when so much greed and so many lies become so bad—even if it is only by a few—that something meaningful has to be done. We must act quickly to protect the investor, provide some security for the worker, and restore confidence in the marketplace because, make no mistake about it, today we have a crisis in the integrity of corporate America.

That is why I have worked with Senator Sarbanes in perfecting his bill, and I strongly support it. I am pleased that it is before us

this week. I also commend President Bush for making the strong recommendations he is going to be making in New York.

But I think we need to do at least one other thing, so I have a simple amendment. It is only two short paragraphs in length, but it goes to the very essence of fairness. It simply says that, when the taxman cometh, we all—workers and high-dollar bosses alike—must face him just alike, without any go-betweens or liability firewalls or corporate veils.

This is how it would work. There is a standard tax form called 1040. I know there are more sophisticated ones for big business, but the principle I am getting at is the same. This is what it says:

> Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief they are true, correct and complete.

And then it is signed here by Joe Sixpack. Joe Sixpack of America signs those kinds of forms. There were more than 14 million of those forms filed in April. If Joe Sixpack is required to sign this oath for his family, why shouldn't Josepheus Chardonnay be required to sign that same oath for his corporation?

So my little amendment simply requires that henceforth the chief executive officer of all publicly owned and publicly traded corporations must sign the corporation's annual Federal tax return.

Currently, there is an IRS rule that corporations can designate any corporate officer to sign their tax return. That will not get it. Let's be specific. Let's put it into law: The CEO is the one who is to sign the tax return and must be accountable for it.

Where I come from it is expected that those being paid "to mind the store" should at least know whether the store is losing or making money.

Harry Truman had a sign on his desk in the Oval Office that said, "The Buck Stops Here." For Truman, it meant that he was accountable.

He took the blame. He suffered the consequences when things went bad.

For some of today's CEOs, it is just the opposite. They want no accountability. They shift the blame to others. They hide behind that corporate veil. And, it seems, they rarely if ever pay the consequences.

Their former workers cancel plans for their children to go to college while they sip from champagne flutes in their mansions in Boca and Aspen.

For these CEOs, Truman's famous sign has changed from "The Buck Stops Here" to "The Bucks Go Here."

Our system of collecting taxes is based upon the premise that individual taxpayers will take all steps necessary to ensure that the financial information in the tax return is accurate.

If Joe Sixpack fudges the numbers, he doesn't get a pass from paying penalties or going to jail. I find it outrageous that the same is not a part of the mind set for those in the corporate culture.

If any CEO is not willing to sign the company tax return—if they are not willing to take steps to satisfy themselves that their corporation is accurately reporting financial information—then those CEOs have no right to the prestige and respect that goes with the position they hold.

What is good for the goose is good for the gander. So I urge my colleagues to simply hold our CEOs to the same standard that we now impose upon our average wage earners.

Treat them the same, "Treat 'em" the same. That is the American way. That is what the voters out there want us to do and that is what they expect us to do. "Treat 'em" the same.

And you can take that back home this summer and explain it. Some of these other reforms, I fear, will be more difficult to explain.

Treat 'em the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, TUESDAY, JULY 9, 2002, NUMBER 91, PAGES [S6491–S6496]

Public Company Accounting Reform and Investor Protection Act of 2002—Continued

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Mr. SARBANES. What is now pending before the Senate?

The PRESIDING OFFICER. The Miller amendment, No. 4176.

Mr. SARBANES. I ask for the regular order.

Mr. GRAMM. May we have order, Madam President.

The PRESIDING OFFICER. Members will take their conversations off the floor of the Senate.

Mr. SARBANES. There is a procedural question following the Miller amendment. We have been discussing that. We may be able to resolve it, but we need to do that overnight.

I call for the regular order which, as I understand it, would take us back to the Leahy amendment, with the McConnell amendment pending to Leahy?

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. I call for the regular order.

AMENDMENT NO. 4175

The PRESIDING OFFICER. The amendment is now pending. The Senator from Massachusetts.

Mr. LEAHY. Will the Senator yield for a question? We are on, am I correct, the Leahy amendment which was pending to it the McConnell amendment?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. As I understand it, the matter before the Senate now is the McConnell amendment; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Madam President, this amendment of the Senator from Kentucky is what we call around here and everywhere a poison pill amendment intended to prevent serious action on corporate accountability. Just as a few Republicans sought to stop campaign finance reform with similar amendments, now they are trying to block action to make executives accountable. The lack of corporate responsibility in the United States has undermined the credibility of our markets and devastated the retirement savings of millions of Americans.

This widespread abuse of corporate power has jeopardized our Nation's economic recovery and hurt the legitimacy of our fundamental institutions. We must not call for the obstructionism of Senate Republicans. Instead, we must heed the call of the American people and insist on bold action this week to ensure that corporations are made accountable and that workers and investors are protected against these abuses.

The Leahy amendment, which my Republican colleagues seek to block, was unanimously approved by the Judiciary Committee in April. It includes critical measures to strengthen the ability of Federal prosecutors to detect, prevent, and prosecute corporate fraud. It makes acts of document shredding and corporate fraud punishable by 10 years in prison. It lengthens the statute of limitations for victims of security fraud.

Finally, the bill directs the U.S. Sentencing Commission to review criminal penalties for obstruction of justice and corporate fraud.

Today, Americans are outraged by the endless corporate scandals, and Congress must act to hold corporate crooks fully accountable and to restore confidence in our markets.

Defeating the "poison pill" amendment offered by Senator McConnell is the first step toward that goal. Senator McConnell's amendment would put America's workers in double jeopardy. The amendment puts new requirements on workers' representatives, despite the fact that these officials currently face disclosure and reporting requirements which surpass those of public companies.

This amendment would subject small local unions with annual receipts of only $200,000, which are already subject to labor reporting requirements, to the same SEC reporting requirements as large public companies which typically have resources in the millions.

The reality is that union finances are already more heavily regulated than those of most public companies. The Department of Labor under current law can investigate and audit union financial records at any time, including conducting random audits. There is no comparable requirement for public companies today.

There are many other examples of current labor laws requiring much stricter disclosure by unions than the SEC requires of publicly traded companies. Unions have to list every employee who receives more than $10,000. But the SEC does not require this of companies. Unions have to provide more detailed information regarding their loans than do public companies under SEC require-

ments. Unions have to provide more detailed lists of their investment today than do public companies under the SEC requirements.

The list goes on and on and on.

For over 40 years under labor laws, union officials have been required to certify the annual financial reporting of their unions under penalty of perjury.

The McConnell amendment certification requirement ignores the safeguards that already exist under our labor laws. Union officials are already subject to criminal penalties, which include jail time for willfully failing to file reports, or knowingly making false statements, or willfully concealing documents. Union officials who violate these provisions are subject to jail time as well as substantial fines.

It is misguided to apply SEC requirements and penalties which were designed for publicly traded companies to not-for-profit groups such as unions. Even the Department of Labor recognizes this.

Don Todd, Deputy Assistant Secretary in charge of the Department's Union Reporting Office, wrote last August regarding SEC requirements that the Department of Labor does not have the expertise to provide more than a very general overview of this complex area of law. Why in the world would we want to force the labor unions to comply with SEC filing requirements when the relevant oversight agency doesn't understand this area of the law?

The bottom line here is that the Republicans fear corporate responsibility. They know the American people are outraged by the endless series of corporate scandals that are hurting workers, retirees, and our economic recovery. Rather than admit the scope of corporate corruption and the urgency of criminal penalties for corrupt executives proposed by Senator Leahy, the Republicans are seeking to poison the well. If we allow this, the American people will never forgive us for passing up this unique opportunity to bring accountability to corporate executives. Corporate criminals must be made to pay for their misdeeds.

I urge my colleagues to vote against the McConnell amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, first of all, let me point out something. Senator McConnell's amendment changes nothing in the Leahy amendment. The adoption of Senator McConnell's amendment does nothing to change the Leahy amendment. I understand that Senator McConnell tomorrow is going to come over and speak at great length on his amendment. But I don't want anyone to be deceived as to what the amendment is about.

The amendment has nothing to do with the Leahy amendment in terms of its adoption in any way delaying or changing the Leahy amendment.

The Senator from Kentucky has proposed a simple proposition that I believe is unassailable logically. That proposition is we are going to put penalties on filing false reports by corporations, and we are going to in the process send people to prison for it. I support that provision. I think there are probably 100 Members of the Senate who support that part of Senator Leahy's amendment.

The Senator from Kentucky simply asks the question: Why don't we require that labor unions, when they submit financial statements once a year, have them audited by CPAs? Second, why don't

we have them sign those reports and be accountable for their accuracy?

I am sure that people who do not want unions subjected to transparency and to accountability are going to say: Well, this is an effort to circumvent requirements on corporate America. Nothing could be further from the truth. This amendment does not strike the Leahy amendment. It simply adds a simple provision to it that applies parallel standards to unions.

Senator Kennedy says this neglects existing law. The point is that the existing law is not very strong. Many unions don't even submit these reports. You could argue on the corporate side that we already have a body of law; why are we writing new laws? We are writing new laws because we need stronger and better laws. We have a bipartisan consensus that we do it.

Also, Senator Kennedy says the veracity of these reports should follow under another jurisdiction. We are talking about accounting. We are talking about accuracy in reporting. We are talking about transparency. We are talking about accountability. Surely union members, in reading a report, should have the same confidence that it is valid, that a certified public accountant who is subject to high ethical standards wrote the report, and that the president of the unions certifies it, and that the president is going to be held accountable if it doesn't meet the standards we are setting.

Let me just summarize, since we are going to debate this amendment tomorrow, by saying:

No. 1, this amendment does not change the Leahy amendment. If you are for the Leahy amendment, that is fine.

The question the Senator from Kentucky poses is, should similar parallel requirements be imposed on unions that issue a financial statement annually, and should they have to be certified by a certified public accountant? And should the president of the union have to sign the report as the president of a corporation does? Should they be held liable if the report is not accurate and if they knowingly file an inaccurate report?

That is the question.

No. 2, it seems to me it is perfectly reasonable. You might be for it, and you might be against it, but you can't say it has anything to do with trying to undo the Leahy amendment.

It seems to me that if you are against it, you have to explain why unions should not be required to meet high standards in filing reports.

I haven't spoken on the Leahy amendment. It is my understanding we are going to be debating it tomorrow. I would like to simply outline what is in the amendment that I am for and what is in the amendment that I am against. I can do it very briefly.

If people knowingly and willfully violate the law, I support putting them in prison. The President has proposed doubling the sentence. I am for that. I hope at some point the administration will give us legislative language to implement the changes the President proposed today. I am hopeful that on a bipartisan basis we can adopt it on the floor of the Senate as part of this bill.

If we do not have time to do it, I have every reason to believe there will be bipartisan support to make those changes and those additions, those strengthening amendments in conference.

There is only one part of the Leahy amendment to which I object. Unfortunately, it is a very important part of the amendment that no one is focusing on when they are talking about the Leahy amendment. In fact, I would move that we simply accept the Leahy amendment except for this small but important provision.

I remind my colleagues that in 1995, on a bipartisan basis, we adopted the Private Securities Litigation Reform Act, legislation that basically amended securities laws to deal with the whole issue of predatory strike suits where one law firm was filing 80 percent of the lawsuits against corporate America and we had a reform of corporate liability. That bill was adopted on a bipartisan vote. It is the only bill that we overrode President Clinton's veto on in 8 years in office.

One of the reforms was to set statute of limitations requirements that basically paralleled the securities acts from the 1930s. What we said is, if you want to file a lawsuit, you have to do it within a year of when you know there was a violation or within 3 years of when the violation occurred.

The whole point of statute of limitations is, that beyond some point it is very difficult to maintain records. You do not know what happened. People's memories fade. People die. This was part of this important reform.

The Leahy amendment effectively throws out the 1 year and the 3 year statute of limitations and adopts a 5 year limitation. Now, he claims it is a 2 year and 5 year, but the 2 year applies only if you can prove that the person who filed the lawsuit knew that the violation occurred outside of the 2 years. I would assert that is virtually impossible to prove.

It is interesting, in statute of limitations, where you are saying you have to act on a timely basis because people do not have knowledge after periods of time expire, under this, you have to have enough knowledge to prove that they knew, which I think is a standard that could not possibly work. No one really believes it could work.

So the reality is, we are striking the 1-year and the 3-year statute of limitations in the securities litigation reform bill, and we are substituting a 5-year statute of limitations for it. That is a provision that I oppose. Every other part of the Leahy amendment I support. I personally would be willing to see it accepted by unanimous consent save that one provision in the bill. I think it is an important provision.

But I want people to know, as we go into the debate, that my support for the McConnell amendment has nothing to do with the Leahy amendment; it simply has to do with having been convinced that there is logic to the McConnell position.

If we are trying to get transparency in financial reporting, if we are trying to hold people accountable, if we want honest numbers, it seems to me the logical place would be to start with Government, which we have not done. But the second point, it seems to me, is to apply the same standard to business and to labor. That is what McConnell has done.

Tomorrow we will have the debate on it, but I wanted to outline what the amendment did and did not do and my position on the Leahy amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I am prompted to enter this debate by the comments of my colleague from Texas. You cannot evaluate the parallelism of the McConnell amendment without evaluating the requirements that are now imposed upon labor unions under the Labor-Management Reporting and Disclosure Act of 1959. The argument that this is logical is only if you drop out of the picture or the context the fact that the unions are now under extensive reporting requirements in the law, requirements that significantly exceed, in many respects, anything that is required of corporations.

Now, the Department of Labor has the authority to conduct audits of labor unions.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. SARBANES. Yes.

Mr. KENNEDY. According to the statute, it can conduct those audits randomly, as I understand. Does the Senator agree with me that these audits can be done randomly? According to the statute, it says right here, in section 601(a):

> The Secretary shall have power when he believes it necessary in order to determine whether any person has violated . . . any provision of [the legislation] . . . to make an investigation and in connection therewith. . . .

And they may enter such places to inspect such records and accounts in question.

Does the current underlying legislation permit the SEC to conduct random auditing of public entities?

Mr. SARBANES. The auditing is done by the independent public accountants.

Mr. KENNEDY. The point I am making is, at the current time, the Department of Labor can conduct an independent audit at any particular time on any occasion, according to the Labor-Management Reporting Act.

Beyond that, it has the provision:

> Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information. . . .

And it lists all of that information. It already exists.

Mr. SARBANES. Will the Senator yield on that point?

Mr. KENNEDY. Yes.

Mr. SARBANES. The Senator from Kentucky says they are not filing these reports. What are the Secretary of Labor and the Department of Labor doing, because they have the power to make them file their reports. In fact, they can impose penalties, as I understand it, including not only fines but also imprisonment for the failure of union officials to meet the requirements under the statute.

My dear colleague from Texas says, well, look, this thing is on all fours. This is what we are doing to the corporations. And all the McConnell amendment does is it does it to the unions. Now, who could be against that?

But let's look at what is already being done to the unions. Let's look at the requirements under which they already have to function. Let's look at the powers that the Department of Labor and the Secretary of Labor have with respect to this matter.

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. GRAMM. You can make the same argument the SEC has the power to audit any company in America today. Any exchange they are a member of has the power to audit them today. We are saying we need better, stronger, more powerful laws. We need better reporting. People need better information.

All the Senator from Kentucky is saying is, why don't we apply the same thing to the reports that are filed by labor unions.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. Yes. You have the floor.

Mr. SARBANES. Has the Senator examined, with any care, the reporting requirements and the other matters that govern labor union reporting under the Labor-Management Reporting and Disclosure Act?

Mr. GRAMM. Only to the degree that I can say that all the arguments that are being made, saying we do not need to improve reporting, are arguments that someone could make with regard to corporate America. They are already subject to random audits by the SEC. They are already subject to random audits by exchanges. I am not making that argument because I do not believe it.

Mr. SARBANES. What about the requirement on unions that they list the employees whose total of salaries and other disbursements exceed $10,000, including position, gross salary, allowances, and disbursements? What about that requirement that is imposed on the unions to make that kind of disclosure? Where is a comparable disclosure in that regard with respect to corporations?

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. GRAMM. I say, if the Senator wanted to offer an amendment to impose that, he certainly could. And I will stop asking him to yield, but let me make this point.

Mr. SARBANES. To impose it on corporations, you support that?

Mr. GRAMM. If you offer that amendment, I would have to read it. I probably wouldn't.

Mr. SARBANES. All right.

Mr. GRAMM. But the point I am making is, we are talking about two things. One thing that you have to have is a CPA do the audit, and, two, the president of the union and the president of the company has to sign the report. They are liable if they knowingly are misleading people. Those are the only two things the McConnell amendment does.

I just can't see what is wrong with it and why it doesn't make sense. Not that there is anything wrong with that part of the Leahy amendment; I support that part of the Leahy amendment. I just don't understand why this does violence to organized labor. It seems to me it makes perfectly good sense.

Mr. SARBANES. I simply say that a statutory structure has been worked out for labor which is quite extensive and exceeds in many respects anything that applies to corporations. You can't make a judgment about whether you should do anything additional to the unions until you examine carefully what is already required from them under the existing statutory scheme. That is not happening here.

Mr. DODD. Will my colleague yield for a question?

Mr. SARBANES. I yield.

Mr. DODD. It occurs to me as well, in this bill, we are not requiring for all businesses these requirements. These are for businesses that have to file with the SEC.

Mr. SARBANES. That is right, which is a limited universe.

Mr. DODD. It is a limited universe. My point is, we are not talking about every entity that conducts business for profit. We excluded the overwhelming majority of businesses that are private entities, that have no filing requirements with the SEC. Our colleague from Wyoming felt very strongly about this point, that we only deal with public companies, the 16,000 public companies.

Let me ask my colleague this question: Is a labor union a for-profit business or are they a different kind of an entity? I have always understood a labor union was not a business and therefore to require of the labor union that which we require of a for-profit company that is required to file with the SEC seems to be mixing apples and oranges. There is no parallelism here at all.

Mr. SARBANES. The Senator is absolutely correct. The unions ought to have reporting requirements and they ought to file.

Mr. DODD. Correct.

Mr. SARBANES. Those have been put into law. There are extensive authorities in the Secretary of Labor and the Department with respect to the unions—quite extensive authorities, I might add.

We have established one statutory framework to control the reporting requirements and disclosure on the part of unions, which is a completely separate universe from what we are trying to address in this legislation.

The Senator is absolutely right. It is in a sense apples and oranges. You are dealing with two different universes, and you have established two different statutory frameworks within which to address that.

Mr. DODD. If the Senator from Texas were interested in creating a sense of uniformity, I could see him offering an amendment—I wouldn't agree with it—which would require that all businesses that are conducting their operations for profit be subjected to an accounting standard that was equal. Again, my friend from Wyoming would strenuously object to such an amendment. I would as well because of the reasons that smaller companies just could not possibly afford the costs associated with that. But to suggest somehow that a nonprofit organization ought to be subjected to the same rules as a for-profit public company where shareholders and so forth are involved is stretching logic.

I appreciate my colleague yielding.

Mr. SARBANES. It is obvious that one of the distinctions we sought to make in the underlying bill that is before us is that when a company becomes public, you then have an investor interest that has to be protected. Otherwise, manipulation destroys investor confidence and affects the confidence in our capital markets. That is the issue we are confronting now and the impact it is having on the economy.

That was the universe we tried to deal with in this legislation. We were very careful that the legislation does not apply to most businesses in America and doesn't apply to most accountants in America, since most of them don't audit public companies.

Mr. GRAMM. Will the Senator yield?

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Texas.

Mr. GRAMM. I remind my colleagues that in some 40 States in the Union, you can't work unless you are a member of a union. If unions are not public organizations, when you have mandatory requirements, I can't work in Maryland in an area that is unionized without either joining the union or paying union dues. To suggest that unions are somehow private when you have mandatory membership I think won't hold water.

Mr. SARBANES. If the Senator would yield, you don't have mandatory membership. You may have a requirement that you pay a union fee, but the union then has an obligation, if you are in a union shop, to represent you in the collective bargaining efforts and with grievances, and so forth and so on. So the union has to, in effect, provide you a service for the fact that you get charged that fee.

Mr. GRAMM. I am not saying you are not getting anything for it. I am just saying that it is mandatory, and I don't see how you cannot say that unions are public institutions.

Secondly, why do we require CPAs to do audits of companies? We can't audit every company in America. We don't have enough resources. So you try to get a system where the auditor has some degree of responsibility for helping to enforce the standards. I don't see why you wouldn't have CPAs required to do the audits of unions.

I was handed this by Senator McConnell's staff. I am sorry he had an appointment tonight, but the OLMS, which does the compliance audits, did a high of 1,583 audits in 1984. Last year, that was only 238. So I don't know why you wouldn't want a union that has mandatory membership to have its reports done by CPAs who we are holding to a high standard in this bill. That is all I am saying.

Mr. SARBANES. What is the explanation by the Department of Labor for this rather stunning drop in the number of audits? Was it from 1,500 to 200 in 1 year's time or 2 years' time?

Mr. GRAMM. It is from 1984 to 2001.

I would say on that issue, if the Senator will yield, that the President's 2003 budget asked for an additional $3.4 million for 40 full-time positions. It will be very interesting to see if we provide the money for them to have it.

Mr. SARBANES. That is the way to go at this problem; otherwise, it seems to me that the Department of Labor needs to do the job that it has been charged to do. I think that is what those figures amply demonstrate.

I am gratified that the Administration's budget is seeking more money in order to meet these responsibilities, but that is where it ought to be done.

Mr. GRAMM. My final point—and I appreciate the generosity of the chairman—it seems to me the most fundamental requirement is if you are going to make a public report and you have mandatory membership so you are a public institution, you ought to have a certified public accountant do that report and sign that they have done it.

We have decided—I think it is one of the best things in our bill; whatever bill is adopted will have it—to require the heads of com-

panies to sign these reports. I don't know why you wouldn't want the head of the union to sign these reports.

Mr. SARBANES. Would the Senator support a provision that required all companies with annual receipts of $200,000 or more to meet all of these auditing requirements?

Mr. GRAMM. I would if the companies were companies that people had to do business with. If we had anything equivalent in the marketplace to a provision that said you have to buy things from this company or you can't buy them, which in essence we do in States that don't have right-to-work laws; we say that you have to pay the union dues in order to work—you don't have to join, but you have to pay the dues—I think when you have that mandatory element, having to report publicly is logical.

Mr. SARBANES. They do have to report publicly. They are now required to report publicly under the legislation that governs reporting and disclosure. The Senator is speaking as though there are no such requirements.

The fact of it is that there is an elaborately developed framework. Now, the Department of Labor may not be carrying it out fully, as the statute would require. They may be falling short in that regard, but if that is the case, the way to remedy the situation is to provide the resources to the Department of Labor and call upon them to do their job.

Mr. GRAMM. Mr. President, this is Mr. McConnell's amendment, and I will let him debate it. But the whole purpose of having CPAs, the whole purpose of having licensing and the taking of oaths is we cannot audit every company by the Government. I am pleased to say that nobody has proposed to have the Government take over the auditing function. We have proposed to strengthen the CPA process and impose higher standards because that is really our fundamental line of defense.

I just don't understand. It seems to me this would be a logical amendment to take. It only says two things: When unions file a report, it has to be done by a CPA. You have a mandatory membership of unions in some 40 States, and they are public institutions. Secondly, the president of the union, as the president of the company, ought to have to verify the veracity of the statement and be liable if he knowingly is certifying it when he knows it is not valid. I mean you are not holding him accountable if somebody has not told him the truth.

Senator McConnell is going to present case and verse of all of the problems. I don't know the problems, but it seems to me that when we are trying to improve reporting and improve transparency and improve accountability, the simple proposal that when unions file their annual report, as corporations do, a CPA should prepare the report—I just cannot imagine not requiring that.

Secondly, the president of the union ought to have to sign the report and be accountable if he knowingly is saying something that is not true.

Finally, the argument that there are other requirements—well, there are more requirements on corporate America. We just concluded there were not enough. So Senator McConnell is simply saying while you are improving one, improve both. If I were a member of a union, I would like having certified by a CPA a report showing

how my money was spent. I think it would give me more confidence. I would think if the rank-and-file union members in my State would vote on this, there would be an overwhelming vote for it. I don't even know why we are debating this. This is sort of a no-brainer, in my opinion. But my opinion may not be the majority opinion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I agree with the Senator from Texas, this is a no-brainer amendment because I cannot quite understand why we would be establishing a standard here for labor unions. It reminds me of when I was raising my kids and my wife and I had to give one of our children medicine that they didn't want. My daughter would say: I would feel a lot better if my brother had to take it, too. That is what we are having here—businesses faced with corporate corruption. Frankly, we have people on the Senate floor saying, as painful as it is for us to make more disclosures, we would feel better if you could also hurt the labor unions while you are at it. Is that what this is about—to try to find a parity of pain between business and labor? I didn't think so.

The point made by the Senator from Maryland is that labor unions already face extraordinary reporting requirements in a law that has been in place for 43 years—requirements not made of many businesses. In the McConnell-Gramm amendment, it suggests that if your labor union has receipts of $200,000 a year, they are going to add a new burden to the labor unions—even beyond this 43-year-old law.

I listened closely as the Senator from Maryland explained the bill before us. He has worked closely with the Senator from Wyoming to make sure it just applies to public corporations, where there is public investment in stockholders and where there is an item of public trust involved. That is understandable.

So if I would stand before the Members here and say, if you really believe in transparency and disclosure, you ought to apply these requirements to every business in America, many people would say that is an onerous and unnecessary burden; it goes beyond the issue of public trust; now you are going after every business, large and small. That is what the McConnell-Gramm amendment does when it comes to labor unions. They say if a labor union has receipts of $200,000, they have a brandnew set of requirements. The Senator from Texas says these unions are public institutions, they should not be treated as if they are private. Well, they are not. They are subject to the 1959 Labor-Management Reporting and Disclosure Act.

The thing that also concerns me is that many requirements of the labor unions under current law are far stricter than what is required under the SEC for public corporations. I cannot understand why we would want to increase the burden on labor unions when the issue appears to be, at Enron, not a union problem but a business problem. The issue at Enron had to do with members of the board of directors being paid—according to the Governmental Affairs recent report—$350,000 a year to serve on the board and, frankly, missing it completely, or didn't report it when things were

being done that defrauded stockholders, pensioners, and ultimately cost employees their jobs.

That, I thought, was what this debate was about. Instead, we are talking about right-to-work and labor unions. I am sorry, but I don't think people across America believe the problems of Enron and WorldCom and Global Crossing had anything to do with labor unions. They didn't. They had to do with corporate greed and corruption.

I commend Senators Sarbanes and Enzi for bringing to the floor a bill that addresses this in a straightforward manner. The McConnell-Gramm amendment wants to get us on another track to discuss other things. I find this interesting. There is no proposal that this new requirement be applied to any other organization than labor unions. I don't hear anybody coming before us and suggesting that the Boy Scouts of America should be subject to SEC filing. That is a large organization. They certainly have receipts beyond $200,000. I don't hear the suggestion that associations and organizations like the Boy Scouts of America, or the American Legion—I don't want to go too far with this—or the Federalist Society should have more transparency and disclosure and, therefore, should be subject to SEC filings. Nobody brought that up. Is that part of the problem in America, the lack of confidence in our economy? Not at all.

The problem relates to corporations and businesses that have gone too far and lied to the stockholders and the American people. If we get off the track here and decide we are going to go after other battles to be fought, whether labor unions or other organizations, we have missed the point. I think this amendment misses the point.

Let me also say that the McConnell amendment holds labor unions to standards to which not even businesses are being held. In 1995, I happened to be a Member of the House when the so-called Newt Gingrich "Contract on America" came through. One of the things we did there, I am afraid, turned out to be a precursor to what we are going through today in what was known then as securities litigation reform. We basically said we think some of these plaintiff lawyers, class action lawyers, have gone too far and therefore we are going to protect many corporations from liability when it comes to securities transactions. I was 1 of 99 in the House of Representatives who voted against that bill and wanted to sustain President Clinton's veto. We did not prevail. We lost in the House and in the Senate.

It really, sadly, set the stage for where we are today. Another watchdog was gone. Corporations such as Enron and WorldCom didn't have to worry about somebody bringing an action against them for securities misdeeds.

One of the things that was included in the 1995 law was to take away liability for aiding and abetting, in terms of rights of action, causes of action involving corporate fraud. We exempted a whole category of people who, up until that time, had been liable for aiding and abetting fraud. We said in the name of securities litigation reform, we would exempt this category of individuals.

Senator McConnell comes up with this amendment and says: We want to reinstate that aiding and abetting liability, not for busi-

nesses, but we want to put it on labor unions. What is wrong with this picture? We are not imposing it on corporations despite all the scandals we have read about; instead, we are going to impose this new obligation on labor unions.

I am afraid, frankly, that is not a matter of public policy, it is a matter of retribution. I also think we should take a look at how many labor unions could be liable for this audit that is required. There are 70 national and international unions, but the McConnell-Gramm amendment would apply to 5,000 different unions, large and small, across America. It goes way too far.

The amendment certification requirements are also redundant. For more than 40 years, union officers have been required to sign annual financial reports, under penalty of perjury, attesting that the report's information accurately describes the union's financial condition and operations. That is a pretty reasonable standard for labor unions under current law.

We are trying to impose similar standards on corporations so when they file their accounting audit statements, someone puts their name on it and accepts responsibility for the truth and accuracy of the statement.

Frankly, I think Senator McConnell and Senator Gramm have this totally upside down. The problems we face—the corporate corruption, the lack of confidence in the economy, which even the President spoke about today—have nothing to do with labor unions. They really have to do with corporations that have an obligation to the public.

I believe the vast majority of businesses and corporations in America are run by honest people, working hard to make a profit to provide goods, services, and jobs to make America a better place. I do believe that. But there are some who have violated the public trust. The underlying bill addresses that. To bring in an argument now about imposing new obligations on labor unions not only misses the point completely as to why we are here this evening but misses the point about why we are facing this crisis in America.

I stand in opposition to the McConnell-Gramm amendment, and I hope all of my colleagues will join me in remembering why this debate got started.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I, too, wish to verbalize my opposition to this amendment that tries to draw in a completely extraneous item which has not been debated in the context of this bill in the 10 Committee hearings we had with regard to putting together the Corporate Corruption and Investor Protection Act.

It has not been involved in any of the President's discussions about corporate abuse or fraud that we have heard discussed. It is not in any way related to the group of organizations with which we are attempting to deal, which are large, publicly traded corporations, and really ignores the fact that there is already a body of law that deals with union organizations and union officers with regard to their responsibility to their memberships and for their reporting requirements.

For a whole host of reasons, I do not understand how this even relates to the issue that is the fundamental part of the underlying

bill, and there certainly is not any evidence in the marketplace of ideas and activities across America that would justify pulling labor unions by their actions into the fish net about which we are talking. This is about corporate corruption. It is about investor protection. It is about making sure corporate fraud is properly dealt with in the legal system, one that puts everyone on notice that they have serious responsibilities to certify that what is reported is real, and if it is not real, then people are held accountable.

We are off on the wrong track, and if we end up having too many of these diversionary tactics away from the underlying principles of what we are trying to accomplish, which is to have measured, reasonable, and thoughtful progress with regard to corporate responsibility, corporate accountability, accounting reform, and investor protection, public protection, then I think we are going to miss the opportunity to secure our economy, to secure the steps that are necessary for most people to restart this engine of investment that drives our economy. This is completely off point.

I hope my colleagues in the Senate will recognize it for what it is and move on, turn this down, and get on with the underlying amendment that Senator Leahy has so appropriately brought to bear in this case.

I yield the floor.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, WEDNESDAY, JULY 10, 2002, NUMBER 92, PAGES [S6524–S6560]

Public Company Accounting Reform and Investor Protection Act of 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2673, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Daschle (for Leahy) amendment No. 4174, to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities.

Gramm (for McConnell) amendment No. 4175 (to amendment No. 4174), to provide for certification of financial reports by labor organizations to improve quality and transparency in financial reporting and independent audits and accounting services for labor organizations.

Miller amendment 4176, to amend the Internal Revenue Code of 1986 to require the signing of corporate tax returns by the chief executive officer of the corporation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to be added as a cosponsor of the Leahy amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I wanted to come out here on the floor and thank Senator Sarbanes for his leadership in putting together a piece of legislation that deals with structural reform of corporate governance and auditing independence.

I also think what the Chairman didn't do is very important. Senator Sarbanes didn't just call for a roundup of the usual suspects but for the prosecution of the worst offenders who deliberately have enriched themselves at the expense of the employees, investors, and creditors, and then try to claim that it is the end of the matter. This bill does hold bad actors accountable for their fraud and deception. And it is probably going to be stronger by the time it leaves the Senate Chamber.

The legislation goes much further, and it should because the problem goes much deeper. We are faced with much more than just the wrongdoing of individual executives. We are faced with a crisis in confidence in America's capital markets and in American business.

These corporate insider scandals are threatening the economic security of families all across Minnesota, North Dakota, New Jersey, Maryland, and all across the country. It is heartbreaking. You have people who have taken their savings and put them into stock. This is what was going to be their resources to help send their kids to college or to meet other family needs. The value of that has eroded.

Other people have 401(k) plans and are counting on that for retirement security. The value of that has eroded.

But I think the other big issue is really important, which is above and beyond hundreds of billions of dollars wiped out. That is what has happened already. You do not have investor confidence. Without investor confidence, we will not have the economic recovery that we need. Jobs aren't being created. Frankly, this affects all of us.

It is this last problem on which I want to focus. I see my colleague from New Jersey who knows much more about finance than I do.

There is a business cycle. Some years are good and some years are bad. Sometimes companies do well and sometimes companies don't do well. Sometimes people invest more and sometimes they invest less. That is the risk they take.

If the only problem was that executives at Enron were corrupt and their business failed—all of which is true—or WorldCom officers were fudging the books and the company really wasn't all that profitable—which is true—and that a lot of businesses, such as Global Crossing—what they were doing, to be blunt, was just fake—which is true—even with all of that, I don't think we would be out here on the floor with this legislation.

In other words, if the story was only that a bunch of companies did badly, lost money, went bankrupt, and a whole lot of other people were hurt, frankly, I still don't think we would feel this sense of urgency. But that is not the end of the story.

The reason we need this legislation goes way beyond Enron and WorldCom. It is not just because of Global Crossing. It is not just because of MicroStrategy. We need this legislation, and it ought not be cluttered with extraneous amendments, or with delay, because the American investing public has lost its confidence in this corporate system.

I want to emphasize this point because I think some colleagues—some, not all of my colleagues—on the other side of the aisle don't seem to get it. I hate to say it, but I don't think the President or the Administration gets what this is really about.

Again, the President yesterday basically focused on a handful of corporate executives who deliberately misled investors. He talked about a few bad apples. It goes much deeper than that.

Listen to the words of some other Members of the Administration, such as Donald Evans, Secretary of Commerce, who 2 days ago said:

The system has not failed us, but a few have failed the system.

The President said the same thing yesterday.

Treasury Secretary O'Neil said last year that Enron's collapse was "capitalism working." Now, if these individuals didn't have substantial responsibility for the economy, then their comments would be comical. I guess if we asked these guys about Watergate, they would say it was just a burglary. But we are dealing with more structural and deeper issues.

The crisis is a crisis in faith. Investors who thought that if a corporation was doing badly and making poor decisions it would show up on their financial reports now have found out that is not the case. By the way, we should not be shocked by this. In fact, this should be old news to us.

Almost 2 years ago, the then-Chairman of the SEC, Arthur Levitt, approached many of us—I remember the discussion with him in my office—and he said: "Paul, we are on the brink of a crisis in accounting."

What Levitt was saying is, I want to put into effect a rule which is basically going to say that the Andersens of this world cannot be pulling in all these luxurious contracts and money for their internal auditing and all the rest, because once they get all the money, they are going to be reluctant to bite the hand that feeds them. Secondly, they will be put in a position of auditing their own auditing. That is a conflict of interest, and the consequences of it could be tragic for a lot of innocent people.

Arthur Levitt was right. Of the decisions I have made in the Senate, one of the best decisions I ever made was 2 years ago in writing a strong letter of support for the then-Chair of the SEC for what he was trying to do. The auditors haven't done a good job because they have been too close to the firms that they were supposed to be auditing. That is what Arthur Levitt was talking about. He fought for greater auditor independence. His solution looked a lot like what is in this bill.

I am glad I supported his reform. That was a pretty lonely position back then for Chairman Levitt. I am glad the Sarbanes bill is going to get a lot more support. I believe it is going to pass overwhelmingly.

The Sarbanes bill does a number of different things. No. 1, at the core of this crisis is the need to have auditor independence. That is part of what the Sarbanes bill is all about. One hundred years ago, we had politicians and business leaders who were willing to take on entrenched corporate interests that were stifling competition—sound familiar—that were bilking customers and bilking consumers and that basically were enslaving their workers. We are dealing with similar kinds of issues now.

We are now in a new century. This is going to be a real interesting case study—I was a political science teacher—as to whether or not the Senate and the Congress and this Administration will, in fact, be there for strong reform.

The other part of this legislation which is also important is to hold the corporate insiders accountable for their abusive actions. That is why I am so supportive of the Leahy amendment.

If you ask people in any coffee shop in Minnesota, should there be criminal penalties for altering the documents, such as a 10-year

felony, they will say, absolutely. If you ask people in Minnesota, should there be whistleblower protection for employees of public companies who actually blow the whistle on these kinds of abuses of power and corruption, people in Minnesota say, absolutely. If you ask, should there be criminal penalties for securities fraud, create a new 10-year felony for defrauding shareholders of a publicly traded company, people in Minnesota will answer, absolutely.

The President spoke yesterday, and the problem is, he did not call for enough resources. He has a lot of tough rhetoric, but then when you look at what is behind the rhetoric you don't see the resources the SEC needs for the oversight. You don't see an oversight board that is set up, as the Sarbanes bill does, with authority and independence. Most importantly, from the President we don't get any proposals that insist on auditor independence.

If we have learned one thing, it is that Chairman Levitt was right. Two years ago, Arthur Levitt tried to warn all of us. All of these big companies, accounting companies and all these other people who are tied into this finance, some of the biggest investors, frankly, in politics in the country—I know of no other way to say it—all lobbied hard. Arthur Levitt was clobbered by a whole bunch of people, but he was right. Now we have a chance to do the right thing.

If you were to go back over the last decade, we have passed too much legislation that has taken away some of the individual investor rights, that has made it harder for us to have Government oversight, that refused to look at these blatant conflict of interest situations. As a result of that, we have these corporate insider scandals.

I will say one more time, it is heartbreaking, hundreds of billions of dollars have been lost. It is heartbreaking to see what this has done to people's savings who invested in stock. It is heartbreaking to see what it has done to 401(k) plans, heartbreaking to see the ways in which families are terrified in Minnesota and around the country. Most fundamental of all is, we don't have investor confidence any longer.

I say to my colleague from Maryland, the best thing he did, above and beyond this bill, is he didn't just say, let's go after a few bad apples. He didn't just say that. That would be the end of it. He has dealt with the underlying structural issues so we can prevent this from happening again.

I am extremely proud to support this bill. I can think of some zinger amendments. When I think of these guys who got the golden parachutes, I am amazed. Look at WorldCom.

Mr. SARBANES. Will the Senator yield for a moment?

Mr. WELLSTONE. I will just finish one quick point.

With WorldCom, you are looking at a situation where at the very time—the same old story—they are getting employees to do away with defined benefit packages and then they put their employees in 401(k)s, cheerleading the 401(k)s, while they are doing that, they are dumping their stock. They got out with golden parachutes, all this money. It is outrageous what has happened at the individual abuse level.

It is much deeper than the wrongdoing of these individual corporate chieftains and governance. It gets to the structural issues. That is what is so important about this bill.

Mr. SARBANES. If the Senator will yield, I thank him for that observation because he is absolutely on point. The bad apples ought to be punished. There is no question about it. They ought to be punished severely. But it is very clear, as this issue has unfolded, that we need to make structural changes. We need to change the system so that the so-called gatekeepers are doing the job they are supposed to be doing. That has not been happening. That is why we need to remove these conflicts of interest on the part of auditors who are also consultants for the same company, collecting huge fees. And they are supposed to come in as outside auditors and be very tough on the company, which at the same time is giving them large fees for consultancy.

The Senator is absolutely on point. We have to put in place a framework, a system which tightens up and begins to screen out these things.

Furthermore, if you go after the bad apples, fine; but the damage has already been done, as the Senator just observed, for instance, WorldCom and the collapse of the whole pension program and pension provisions.

Punishing a bad apple may have something of a deterrent effect, but there is nothing like putting a system into place that gives a heightened assurance that you are going to be accountable. That is what investors are looking for.

Mr. WELLSTONE. One more minute. What I said earlier, the problem with rounding up the usual suspects is quite often you then say that is the end of the matter. That is why the President's proposals yesterday come in for strong constructive criticism.

The story in the Post today in the business section is another outrageous example of what happened. WorldCom swallows MCI and tells the MCI employees they don't have a defined benefit any longer and puts them on the 401(k), cheerleads them on to put the investment into the company, cooks the books, and doesn't give them any accurate information on what happened to them. Now what happens to all these MCI employees? They don't have any of the savings any longer.

So do you know what. We have to hold these people accountable, absolutely, but at the same time don't let anybody—people in Minnesota—get away with saying it is a few bad apples and that is all we are going to deal with. No. We are going to deal with the conflict of interest and we are going to have structural reforms. We are going to have oversight. We are going to protect consumers, the little people, and give the business community more confidence so they do the investing in the economy. That is what is at stake with this legislation.

I yield the floor.

Mr. SARBANES. Mr. President, I ask unanimous consent that following Senator McCain, who will speak later, Senator Corzine be recognized to speak for up to 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 4175

The PRESIDING OFFICER (Mr. REED). Under the previous order, the Senator from Kentucky is recognized for up to 30 minutes.

Mr. MCCONNELL. Mr. President, I wish to take the opportunity now to describe in detail the amendment currently pending before us, that which I was unable to do yesterday.

There are two fundamental points to the amendment. What it seeks to do is require independent audits of union funds which, of course, are raised from union members in the vast majority of our States. You don't have a choice; you must belong to a union, and those dues are taken. So we have mandatory auditing of those funds to ensure they are being accurately accounted for, civil penalties for violating those auditing requirements, and, third—this is all the amendment is about, these three points—the president and the secretary of the union must certify as to the accuracy of the audit.

We are talking about guaranteeing the integrity of the funds raised from union members. The reason we require corporations to file financial statements is so corporate shareholders know how their money is being spent. As a second layer of protection for shareholders, we also require those financial statements to be independently audited. Why? So investors know that information filed is actually correct, so they know it is not just the creative writing of a crooked bookkeeper or a corrupt executive.

We take this independent audit requirement, or this second layer, very seriously—so seriously, in fact, that we are creating a third layer in the Sarbanes bill, an entirely new audit oversight board to better police these required audits for the benefit of corporate shareholders.

This third layer is a good idea, especially given today's stories of corporate fraud, deception, and outright theft that we all cite as the real motivation behind the underlying bill. My colleagues have cited the well-publicized financial failures and the endless corporate scandals and the need to hold corporate crooks accountable. I could not agree more. But we also have union corruption, union greed, union scandals.

My amendment will give American workers the assurances that their labor unions' books have been independently audited—the same second layer of protection we have given to corporate shareholders since 1933.

Unions already have to file financial statements. They do so with the Department of Labor on a form called the LM-2. Why? For the same reason corporations do: So American workers, the card-carrying, dues-paying union workers can see where their money goes. But we don't currently require independent audits of union financial statements. Unlike the corporate shareholder, the rank-and-file American worker has no earthly idea if the financial information they rely on is correct—no idea at all. So why shouldn't the American steelworker or longshoreman be entitled to the same assurances as the corporate shareholder who has recklessly overinvested in a bundle of Internet stocks? Isn't the workers' money just as hard earned and deserving of protection—maybe even more so?

I cannot imagine that anyone in this body would argue that American workers do not suffer from the same type of greed and corruption that plagues our corporate and accounting culture, nor can I imagine that as a result of these scandals anybody in this

body believes that American workers do not deserve the very same assurances that their unions' financial statements are correct.

But just in case, let me read for my colleagues a few recent accounts of union corruption. I am going to read quite a few, and I will do so for a specific reason—so nobody can stand up and say that greed and corruption only affects corporate shareholders, so no one can say the only stories here are Enron and WorldCom, and so no one can stand up and say we are wasting time by trying to protect the American workers from being cheated out of their money.

We have all heard of Arthur Andersen, but has anybody heard of Thomas Havey? That is the accounting firm where a partner confessed last month to helping a bookkeeper conceal her embezzlement of hundreds of thousands of dollars from a worker training fund of the International Association of Iron Workers.

Yesterday, a colleague of mine said that the problem at Global Crossing had nothing to do with labor unions. Maybe he hasn't heard of ULLICO. That is the multibillion-dollar insurance company owned primarily by unions and their members' pension funds that invested $7.6 million in Global Crossing. Apparently, ULLICO directors received a sweetheart stock investment deal that allowed them to make millions on the sale of the stock. All the while, union pension funds, however, suffered the fate of Global Crossing.

There is plenty more, beginning with a couple of stories I briefly mentioned yesterday. An accountant with the National Association of Letter Carriers embezzled more than $3.2 million from union funds over an 8-year period to buy 8 cars, 2 boats, 3 jet skis, a riding mower, and 105 collectible dolls.

A former official of the Laborers' Union District Council in Oregon, Idaho, and Wyoming is in jail for accepting hundreds of thousands of dollars in kickbacks for directing money into a Ponzi-like investment scheme that defrauded Oregon labor unions of $355 million.

A former business manager and financial secretary of the International Association of Heat and Frost Insulators and Asbestos Workers Local 87 was indicted by the U.S. attorney for the Western District of Texas for embezzling tens of thousands of dollars in union funds.

Mr. President, a comptroller of the American Federation of State, County and Municipal Employees, Council 71 of New Jersey, was sentenced to 13 months in prison and fined for embezzling tens of thousands of dollars from the union.

A trustee of Glass, Molders, Pottery, Plastics & Allied Workers International Union Local 63B, headquartered in Minneapolis, was charged with forgery and embezzlement in connection with the theft of thousands of dollars from the union.

Fourteen officers and members of Local 91 of the Laborers International Union in Niagara Falls were arrested on charges of labor racketeering, extortion, assault, vandalism, and bombing a dissenting union member's home and stabbing a worker.

A former business manager of IBEW Local 16 in Evansville, IN, was indicted for diverting union dues checks to his personal bank account.

A Federal grand jury recently indicted an ex-business manager of the United Association of Plumbers and Pipefitters Local 15 in Minneapolis in connection with the theft of tens of thousands of dollars from the union.

A former officer of United Food and Commercial Workers Local 1288, in Fresno, CA, was sentenced to 18 months in prison for embezzling almost $300,000 from the union's credit union.

An ex-business manager and financial secretary of the United Union of Roofers, Waterproofers and Allied Workers Local 86, in Columbus, OH, was sentenced to 21 months in prison for embezzling $130,000 from the union to pay his gambling debts.

An ex-president of the American Postal Workers Union Local 1616, in Roanoke Rapids, NC, was indicted for embezzling thousands in union funds and making false entries in union records.

Laborers International Union of North America Local 2, in Chicago, which recently came out of Federal trusteeship imposed because of its close ties to organized crime, failed an oversight audit and is again having significant accounting and bookkeeping problems.

An ex-secretary-treasurer of the American Postal Workers Union Local 761 in Las Vegas and ex-treasurer of the Postal Workers Nevada State Association pled guilty to embezzling $200,000 in union funds.

Two former officers of Steelworkers Local 9339 in Virginia and a former administrator of the local union's disaster relief fund were indicted for conspiracy to embezzle union funds and make false recordkeeping entries.

A grand jury is investigating claims that a local United Auto Workers Union ended an 87-day strike against General Motors only after union officials received phony overtime payments and jobs for their relatives. Union members have also filed civil suits to recover over half a billion dollars—half a billion dollars—from alleged self-dealers.

My good friend, the senior Senator from Texas, always says you cannot argue about facts. Facts are a powerful thing. These are the cold hard facts of union corruption. Just like Enron, just like WorldCom, just like Global Crossing, these are the cold hard facts, and there are plenty more of these facts.

I have a stack of papers filled with what is called a union corruption update. If you look at this stack, this is just for the year 2002. This stack is just for the year 2002—this whole stack—and 2002 is only half over. It is compiled by the National Legal Policy Center. The Department of Labor's Office of Labor Management Standards reports 12 new indictments and 11 convictions of union fraud per month over the last 4 years.

Let's go over that one more time. DOL's Office of Labor Management Standards reports 12 new indictments and 11 convictions of union fraud per month over the last 4 years. This is a serious problem, and the Senate should not let whatever allegiance some Members may have to the leaders of organized labor affect their concern about the workers themselves, and that is what this amendment is about: Providing the same protection for union members that we insist on providing for investors in corporations.

We have a choice before us. Who should bear the cost of union corruption against the rank-and-file, dues-paying American workers? The unions, the perpetrators of much of this fraud, by bearing an incremental cost of an audit that will help prevent future workers from being cheated out of their money? Or the workers, whose money will continue to be embezzled, concealed? And if we do not provide them with minimal assurances of an independent audit, it will go on and on.

To me, this choice is identical—absolutely identical—to the choice in the Sarbanes bill. Who should bear the cost of the corporate and accounting corruption against shareholders, the corporations and accountants, obviously, through improved oversight, enforcement, and corporate responsibility or the investing public whose stock holdings will continue to be embezzled, concealed, if we do not provide them a new accounting oversight board?

Choosing the unions over the workers in this case is no different than siding with the accountants and corporate executives who quietly oppose the Sarbanes bill.

Mr. President, about the complaints I have heard of the burdens and costs associated with this bill. It would not surprise me if the leaders of organized labor have been on the phone calling particularly our Democratic colleagues over the last 24 hours concerned about the burdens and costs associated with this bill.

First of all, I find it absolutely astounding, given the pervasiveness of union corruption, that some of our colleagues are worried about the incremental cost of stopping that corruption, the cost of giving union workers the same quality assurance answers that we are prepared to give corporate shareholders in the underlying bill.

I do not hear any complaints about the cost of a new accounting oversight board or the cost of corporate responsibility or enhanced disclosure requirements in the Sarbanes bill. Why not? Because the accountants and executives are the ones responsible for the fraud and deception of investors. But for some reason, when it comes to unions, some of our colleagues speak less about the cost to the workers being ripped off and more about the burdens this amendment will place on unions whose officials are responsible for the greed and corruption documented in the binder I just held up a few minutes ago which represented only half of the year 2002.

We hear that unions are saddled with too many requirements on their financial statements. I am not concerned with the quantity of disclosure requirements. I am only concerned about the quality of that disclosure, specifically whether the information is accurate and certified as such for the benefit of the dues-paying American union workers.

We hear that we do not need audits. Some have said we do not need audits because the Department of Labor can conduct enforcement audits, if necessary. Well, let's play with that logic a little. If that is the case, we do not need public corporations to be audited either. Let's get the SEC to conduct enforcement audits. Could you imagine the uproar if someone suggested that? And no one has.

Think about the message this would send to American workers that it is not worth requiring your union to assure you that your money is going where they say it is; just take a number and hope the Department conducts an audit of your union.

At any rate, the Department, as most Federal agencies, needs more money to conduct the few enforcement audits that they conduct. The Deputy Secretary of the Department of Labor testified recently that the number of departmental audits has fallen from 1,583 in 1984 to a mere 238 last year, and the President has requested an additional $3.4 million and 40 new staff positions to combat union fraud.

We hear that audits will be too expensive. Here is an easy tip for union officials to save money: Stop stealing it. That is a good way to save money. My amendment only requires audits to any union that already bears the cost of filing financial disclosure statements. In other words, this would apply only to unions that already have to file financial disclosure statements. That is unions with receipts topping $200,000 annually. It goes to my original point. If you have to file an annual report, it ought to be verified as accurate.

We hear that smaller unions will be hit hardest by having to conduct an audit. Well, there is no national one-rate plan for audits of which I am aware. As any professional service, the rates are proportional to the size and scope of the client. Obviously, a union with $500,000 is not going to pay in audit fees what a $60 million corporation pays for an audit.

Let me close this part of my remarks with a simple suggestion for my colleagues who have been tricked into worrying about the cost this amendment would impose on unions. Just imagine this: The cost to American workers of not requiring audits. Let us think about the cost to American workers of not requiring audits: More embezzlement, more crooked bookkeeping, more abuse and concealment of workers' hard-earned money.

We do not need more embezzlement, more crooked bookkeeping, and more concealment of workers' hard-earned money. We have a choice. We can extend to American workers the same financial protection afforded corporate shareholders, or we can extend to unions the ability to continue to pilfer and profit off the workers' money. That is the choice.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kentucky has 8 minutes 30 seconds remaining.

Mr. MCCONNELL. I know the Senator from Arizona has been waiting patiently. I would like to reserve my 8 minutes because I am not clear how long this debate is going to go on. We do not have a time agreement yet for a vote. Is that correct? I guess I am asking my friend from Maryland what his plans are for the disposition of the McConnell amendment.

Mr. SARBANES. If the Senator will yield, we have people lined up to speak once the Senator has concluded, Senator McCain and then Senator Corzine. After that, I anticipate then dealing with the McConnell amendment.

Mr. MCCONNELL. So is it the plan of the Senator from Maryland to have a vote sometime in the next hour or so?

Mr. SARBANES. I would anticipate a vote in relation to the McConnell amendment—well, we have 30 minutes.

Mr. McCONNELL. Could we do this, then? I ask unanimous consent that I have 2 minutes prior to the vote to sum up what I think this amendment is about.

Mr. SARBANES. I certainly think that could be done. I intend to speak to it for a few minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Therefore, I yield the floor.

AMENDMENT NO. 4174

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized for up to 15 minutes.

The Senator from Arizona.

Mr. McCAIN. Mr. President, for the benefit of the managers, I do not intend to consume all 15 minutes.

I rise in strong support of the underlying Leahy amendment, and I hope we can dispose of that amendment within a reasonable length of time and move on to other changes that need to be made to this very important legislation.

Our publicly owned companies are an essential component to the economic health of our country. As we have seen over the past few months, the continued lapses of our corporate leaders, whether they are ethical, criminal or just plain ignorant, have a significant, sometimes crippling, effect on the welfare of our Nation. We must make some fundamental changes in the current system of corporate oversight to protect Americans from avarice, greed, ignorance and criminal behavior. Now is the time for Congress to restore investor confidence and take the necessary action to protect the interests of the public shareholders and place those interests above the personal interests of those entrusted with managing and advising those companies. The deterioration of the checks and balances that safeguard the public against corporate abuses must be reversed.

We have to address the shortcomings in Federal law and send the message that prosecutors now have the tools to incarcerate persons who defraud investors or alter or destroy evidence in certain Federal investigations. This amendment is a step in the right direction. It creates two new criminal states that would clarify current criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records. The Enron debacle clearly indicated that there were gaping holes in the current framework. There will be a 10 year criminal penalty for the destruction or creation of evidence with the intent to obstruct a Federal investigation. There will be a new 5 year criminal penalty for the willful failure to preserve, for a minimum of five years, audit papers of companies that issue securities.

The amendment also provides for the review and enhancement of criminal penalties in cases involving obstruction of justice and serious fraud cases. All of these actions are necessary to deter future criminal action. Until somebody responsible goes to jail for a significant amount of time, I am not sure that these people are going to get the message. Defrauding the shareholder has to carry a meaningful penalty. Corporate decision-makers can make millions, tens of millions, even hundreds of millions of dollars by cheating investors. A relatively small fine or short prison term is

not a deterrent; it's a slap on the wrist. The threat of real time in jail is a deterrent that will make people pay attention.

This amendment also creates a new securities fraud offense. The provision makes it easier, in a limited class of cases, to prove securities fraud. Currently prosecutors are forced to resort to a patchwork of technical offenses and regulations that criminalize particular violations of securities law, or to treat the cases as generic mail or wire fraud that results in a five-year maximum penalty. This new provision would criminalize any scheme or artifice to defraud persons in connection with securities of publicly traded companies or to obtain their money or property. This new ten-year felony is comparable to existing bank and health care fraud statutes. To those who would say that it's hard to define a scheme or artifice to defraud, I would say that full and honest disclosure of material dealings and accounting treatments is the best way for the officers who run America's corporations to protect themselves and those who invest in their companies. There are plenty of felony laws on the books that provide long prison terms for crimes that cause less damage than the losses to shareholders in Enron or WorldCom.

It is important to emphasize that when criminal charges are pursued, it is not necessarily the firm that should be charged but the individuals at the helm of the corporate ship who should be prosecuted. If they are the ones making the decisions out of self-interest, they are the ones that should be held accountable. I also believe that we must protect the "corporate whistleblower" from being punished for having the moral courage to break the corporate code of silence. This amendment does that.

This amendment also extends the current statute of limitations for matters concerning securities fraud, deceit or manipulation. The current statute of limitations for securities fraud cases is short given the complexity of many of these matters, and defrauded investors may be wrongly stopped short in their attempts to recoup their losses under current law. The existing statute of limitations for most securities fraud cases is one year after the fraud was discovered but no more than three years from the date of the fraud regardless of when it was discovered. Because this statute of limitations is so short, the worst offenders may avoid accountability and be rewarded if they can successfully cover up their misconduct for merely three years. The more complex the case, the easier it will be for these wrongdoers to get away with fraud. According to at least one state Attorney General, the current short statute of limitations has forced some states to forgo claims against Enron based on alleged securities fraud in 1997 and 1998.

This situation essentially encourages offenders to attempt to cover up their misdeeds however they can, including by using questionable accounting procedures and financial shell games. Furthermore, in some cases, the facts of a case simply do not come to light until years after the fraud. If a person does not and cannot know they have been defrauded, it is unfair to bar them from the courthouse. We need to recognize the sophistication and complexity of modern-day schemes designed to defraud investors. The Leahy amendment does this.

Finally, this provision amends the Federal bankruptcy code to prevent the corporate wrongdoer, the CEO or CFO, from sheltering

their assets under the umbrella of bankruptcy and protecting them from judgments and settlements arising from Federal and state securities law violations. Too many of these highly paid corporate officers are using bankruptcy laws to protect their assets while maintaining their high-rise penthouses and ski chalets. It is time to force accountability and punish the person, not the institution, who is not willing to abide by the moral and legal codes that accompany leadership and public trust.

I hope we will have an early and overwhelming vote in favor of the Leahy amendment.

I yield the floor.

Mr. SARBANES. Mr. President, so Members may have a sense of what the program is in the short term, I will propound a unanimous consent request and I hope it will be accepted and then we can move forward.

I ask unanimous consent that following Senator Corzine, there be 15 minutes allotted to Senator Gramm, 5 minutes allotted to Senator McConnell, 10 minutes to myself as the manager of the bill—or up to these amounts of time; hopefully, they won't all be used—and at the conclusion thereof, there be a vote on or in relation to the McConnell amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from New Jersey is recognized for up to 10 minutes.

Mr. CORZINE. Mr. President, today I rise to speak on both the amendment proposed by Senator Leahy and also to the underlying bill which I feel quite strongly about.

I am quite pleased to support Senator Leahy's amendment. It creates tough new securities fraud penalties and punishes corporate wrongdoers we have just heard the Senator from Arizona speak to. It is a meaningful and appropriate response to the kind of corruption we have seen and makes sure that punishment meets the nature of the act. It also protects corporate whistleblowers, prohibits corporate executives who violate securities laws from hiding behind the bankruptcy code.

In summary, this is more than mere lip service with regard to enforcement and punishment of corporate fraud. It is real reform. It is real response as a methodology to deter criminal conduct. It will go a long way toward providing incentives that are necessary to protect investors and pensioners and others who operate in the marketplace, in contrast to strong rhetoric from some with regard to what we need to do about punishment but not putting reality into place to deal with the issues. I am proud to cosponsor the Leahy amendment, and I urge all colleagues to do so as well.

Mr. President, we need to speak clearly and directly in the Senate about restoring and sustaining the trust in America's capital markets, trust in America's economic security going forward. For several days leading up to yesterday morning's Presidential speech on Wall Street, there was a buzz of anticipation that we would see a real embracing of change. Some went so far as to suggest the President's speech might lead to a Roosevelt moment, an embrace, a change in policy, a change in direction, maybe counterintuitive to the history of the man because it was in the Nation's best interests.

In retrospect, it is safe to say, while the President's speech was good with respect to rhetoric, it was hardly Rooseveltian or a Ruthian moment in the home of the New York Yankees. Unfortunately, it was far from a home run, in my view, and did emphasize rhetoric as a substitute for reform. Its lack of specifics or detail I found unfortunate.

It is not to say that the President's speech did not include some important themes, or, by the way, embrace an initiative that is quite important; that is, the corporate fraud task force in the Justice Department which will be a strong step in carrying out pursuit of wrongdoers.

However, stating the commitment of his Administration pursuing these folks, while an important message, needs to be more substantive. We need specific undertakings to protect investors and shareholders. It was what the President did not say in terms of offering specifics, particularly specifics with regard to structural changes that will solve the problems, deal with the problems, provide checks and balances to the problems that we have seen from the Enrons, WorldComs, Global Crossings, et cetera. That is why the speech fell short of what many expected.

The best way, in my view, the President could have accomplished that simple important message would have been to acknowledge the comprehensive structural reform that needs to be put in place and is expressed most clearly, most effectively, by the legislation we are considering on this floor right now, the Public Company Accounting Reform and Investor Protection Act.

The Sarbanes bill, the bill we are talking about on this floor, comprehensively reforms our accounting profession. It is detailed, it is specific, and it is quite a strong element with regard to accounting professionals' responsibilities. It enhances corporate accountability, improves transparency of corporate financial statements, truly strengthens the ability of the SEC to operate as an enforcement agency, and as a regulatory agency to a significant degree. In combination, all those factors together will go a long way to restore investor confidence in American capital markets and, more importantly, restore faith in our economic system.

I think this is the direction it should take. But before I discuss the merits of the legislation in specific, I take a moment to pay tribute to the leadership of the distinguished Chairman of the Banking Committee, Senator Sarbanes. In shepherding this bipartisan legislation to the floor of the Senate, he has really done an outstanding job of bringing together a lot of disparate views on a very difficult and complex problem, synthesized into a terrific response to a real problem.

I see Senator Enzi in the Chamber. I also congratulate him for his help in making sure we have a bipartisan effort in this process. His contributions have been enormous. There are a number of people on staff who I think have done a terrific job to make sure this happens.

But Paul Sarbanes, Chairman of the Banking Committee, has done an incredible job, a thorough job, making sure we have measured, balanced, deliberate steps to be taken to meet a crisis of confidence. I think the American people will be grateful that we have responded in a proper way. It has been a privilege for me to work

with all my colleagues in the Banking Committee, but particularly the Chairman. Particularly as a freshman, I learned so much of how this legislative process works.

I must say, after 30 years in business, working my way up, the 10 days of hearings we had with respect to this particular subject, with exhaustive testimony, thoughtful testimony provided from a large range of perspectives, was one of the best graduate seminars I have ever had in business. I hope actually somebody will take the time to try to publish these, and they will be used as an example both of how the legislative process should work but also how the structure and nature of public policy debates with regard to business policy will occur. It is extraordinary. I think it forms an enormously positive foundation for the kind of thoughtful legislation the Chairman has brought to bear.

With that as backdrop, we all know that there are serious problems in our system. The list of companies involved is way too long and way too important—many of them supposed models of the new economy. But I want to move a little bit away from just some of the simple concepts we talk about, the most headlined, the name concepts or companies, to focus on the fact that we are going to have almost 300 restatements of earnings this year, this year in our economy—300 restatements. There have been almost 1,100 restatements since 1997 of company earnings reports. This is a problem.

It is not just the individual headline companies, it is the fact that this is going on every day in our marketplace. It is no wonder that investors—institutional, retail, foreign, pensioners—do not have a sense of where we should be or how they should make their commitments to markets. That is because they cannot trust the numbers. There have been broken retirement dreams, lost jobs, and companies shut down. This really needs to change.

Roughly 10 percent of major companies—of the 12,000 actively traded companies, almost 10 percent of them have had statements of change in the last 4 years. That is just bad. That is why investors worldwide have developed some skepticism about our markets. Some might even say that is why our dollar has depreciated as sharply as it has in the last 2 or 3 months. Confidence is shaken—it is real.

American financial markets have been a tremendous engine for economic growth. We have had a highly efficient capital market, and that has fueled our economy. We need to act.

While the depth and breadth of efficiency of our markets is still substantial, if we continue to have this kind of erosion of confidence, we are going to be missing one of the important drivers of America's great success in leadership in the world. While I will not go through every detail of this bill, if we do not come up with a strong oversight of our accounting industry, make sure the information that people make their decisions and take their decisions to the marketplace with is sound and secure, then we will not have those strong capital markets and strong economy. I think we can all agree upon that, in the nature of a bipartisan initiative, to make sure we are moving in the right direction.

I hope we can focus on the reality that some of the conflicts of interest that exist in our practices in the accounting world have

been part of the cause and the focus. Some of the conflicts of interest in the investment banking business, the world I came from, with regard to our analysts, have undermined our security with regard to how people analyze and understand where companies fit.

Other issues that need to be dealt with are the "revolving doors"—executives from accounting firms going to companies they worked for—and the lack of independence of audit committees. All of these factors underlie a growing public distrust in the corporate financial information. It really needs to be acted upon.

While these things are real, I think we need structural response. We cannot just identify a few bad apples. This is more than that. Remember: 1,100 corporate restatements in the last 4 years. There is a structural problem, a systemic problem that is undermining the health security of our economy. I hope people will realize that in the context of the kind of debates we are going to have with regard to this bill—but maybe even more important, when we get into a conference and try to put it together with the House response, and get it to the President.

Unfortunately, I think the other elements of proposals on the table just do not meet the kind of standards that the Sarbanes proposal, the Banking Committee proposal, brings to bear. I hope we will be able to deal with that going forward.

I would be happy to talk about the specifics as we go forward. I know others need to get into this aspect. Other than we need to have a real reform of the accounting industry, we need a strong oversight board. We need to really deal with the corporate accountability issues, which I think the Leahy amendment goes a long way to strengthen in this bill. There are many elements inside it.

We need to give the SEC the kinds of resources so it can actually do the job it is expected to do. The President talked about giving them $100 million additional resources. Even the House has talked about $300 million increments. We do not provide for pay parity. There are just so many weaknesses in some of the proposals that are watered down relative to what we have on the table before the Senate.

I can only say I hope we can keep this bipartisan effort together because I think what we need is a final product that will deal with the reality of the undermining of confidence we have across the board, in a whole host of ways with regard to our financial markets, with regard to our accounting statements and with regard to the economy itself. This is too important to make a political issue. This is one to make sure we move forward in a way that we secure America's economic future.

The continued vitality of America's markets is at stake. We need to make this a priority. We need to move quickly. We need to understand it is systemic, it is not just anecdotal, it is not just a few bad apples. I think the bill we have on this floor will go a long way. Some of the amendments that are brought forward can strengthen it.

We need real reform. We need it now. We do not need rhetoric. We need to be able to restore the confidence the American people want to see, move away from the era of Enron and WorldCom, and get to an era where we have markets that are balanced and fair, where they have the checks and balances in them to give people

the confidence that when they make an investment, that investment is what they thought it was when they entered into it.

I thank the Chairman for an extraordinary effort in bringing together an exceptional bill. I am proud to be part of this effort. I look forward to continued debate and hopefully bringing it to the President's desk as soon as possible.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SARBANES. Mr. President, I ask unanimous consent to speak for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I thank the able Senator for his very kind comments.

I underscore, as I said last night on the floor when Senator Dodd was here, my deep appreciation for the very positive and constructive contribution which Senator Dodd and Senator Corzine have made to this legislation. Early on, they introduced S. 2004, the Dodd-Corzine bill that formed the basis of a great deal of what is now before the Senate. I really appreciate the tremendous effort on the part of the two Senators.

I think it is very important that I make it very clear how much I appreciate the Senator's continuing, very strong contributions in the committee and now as we consider this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, I think under the agreement there are 15 minutes allotted to Senator Gramm, 5 minutes to Senator McConnell, and I have reserved 10 minutes before we go to a vote on or in relation to the McConnell amendment.

Mr. LEAHY. Mr. President, I ask unanimous consent to proceed for 30 seconds without taking the time reserved for my colleagues.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Arizona, Mr. McCain, for his kind words earlier this morning. He is the supporter of the Leahy-McCain-Daschle, et al, amendment pending before the body. I will speak further at an appropriate time when I am not imposing on the time reserved by our colleagues. I wanted to thank Senator McCain for his support of the amendment and for his kind remarks.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I believe the Senator from Texas is on the way. He is not here yet, so I will go ahead with my closing remarks.

Let me describe again what the McConnell amendment does. It is really quite simple. I think the first thing to remember is that it doesn't change in any way the Leahy proposal. It doesn't change in any way the Sarbanes proposal. It does not alter either of those. This is an addition to the underlying Sarbanes bill, and to the Leahy amendment, which I assume is going to be adopted sometime today. This doesn't in any way detract from the efforts underway to get greater accountability in corporate America.

The McConnell amendment is about adding to that union accountability so that rank-and-file union members can be assured—just as shareholders will now be assured in the underlying bill—that independent audits are being done. They can be assured that there will be civil penalties for violating these new auditing standards. They will be further assured by the fact that the president and the secretary-treasurers of the unions will have to certify as to the accuracy of the financial reports for unions just as we are requiring that for corporate CEOs and CFOs for publicly traded corporations.

We are simply completing the circle of protection for Americans, whether they be investors in corporations or union members whose dues are being paid every payday and who have a right to expect that those funds are going to be treated carefully and correctly.

It has been suggested—I expect it will be suggested again—that this is going to be expensive for the unions. My amendment has been carefully crafted to ensure that it does not impose any egregious new costs, especially on labor. And it only applies to unions with annual receipts over $200,000.

Why did I pick that number for unions that already file financial information with the Department of Labor? They are already having to file. This amendment simply requires that labor organizations with over $200,000 in annual receipts incur the incremental costs of running their financial statement and pass an independent audit, and abide by generally accepted accounting principles. This is a cost borne by any public company with as little as $1 million in total assets.

The additional costs here only apply to the larger unions that already have to file with the Department of Labor in any event.

I want to say again that this is the union corruption update. This massive stack is just for the first half of 2002. There are numerous examples of the problems about which I have been talking. This stack here represents just the first half of 2002.

Some will suggest that the examples I have given show how well DOL is catching and prosecuting union fraud. Unfortunately, that is not the case. The Department of Labor auditing of unions accounts for just 9 percent of all embezzlement cases. The other 91 percent of embezzlement comes from other sources. Without a required audit, union officials do not have to contend with the threat of an annual independent audit hanging over their heads.

The stories speak for themselves. Union corruption is rampant. It is absolutely rampant on the local, national, and pension fund levels all across our country. In the last 2 years, there has been a union embezzlement or closely related case in 40 out of our 50 States. This is a huge problem.

With regard to the financial information already required to be filed, it is not verified by an independent auditor. The current union filings are not verified by an independent auditor. The independent audits required in the McConnell amendment will help verify that the information is indeed accurate. Unions in many instances have not been complying with the filing requirement.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. MCCONNELL. I ask unanimous consent for a couple of more minutes of Senator Gramm's time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Unions have not been complying with the filing requirements. Up to 40 percent of unions required to file LM-2 reports filed late or not at all. The Department of Labor, under current law, can't even fine these organizations for noncompliance. My amendment would at least give them the ability to fine these organizations for noncompliance.

Let me summarize what this is about. We have decided in the Sarbanes bill and in the Leahy amendment that we want accountability in corporate America. We want to hold the CEOs and the CFOs responsible. We want the auditing done accurately. If it is not done accurately, somebody needs to be held responsible.

Why are we doing that? We are doing that because we want to reassure the shareholders that somebody is not cooking the books, that we don't have more WorldComs and Enrons and Global Crossings and the like.

The McConnell amendment seeks to provide those very same protections to rank-and-file citizens who may or may not be big enough to invest in the market. But they are investing their dues every week in the majority of our States where they do not have a choice to not pay their dues. And they have every right to expect independent audits of their funds to make sure they are not being stolen and not being misused. They have every right to expect the presidents of those unions and the secretary-treasurers of those unions to certify as to the accuracy of those audits.

That is what this amendment is about. It is about providing the same fairness to the union member as we provide to the shareholder. Simple justice. I urge that the McConnell amendment be adopted.

I yield the floor.

The PRESIDING OFFICER (Mr. JOHNSON). Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, how much time do I have?

The PRESIDING OFFICER. Thirteen minutes.

Mr. GRAMM. Mr. President, first, I thank Senator McConnell. I do not think anybody who listened to Senator McConnell is going to believe the assertion that somehow this amendment has nothing to do with the logic of this bill. You can take a view that business is for real and that standards should apply there, but organized labor is a different kind of institution and they should not apply there; but if you are making that argument, you have to argue it on the basis of politics. You cannot argue it on the basis of logic. You cannot argue it on the basis of justice or fairness.

What Senator McConnell has done, it seems to me—and I think it is a service to the process that he has done it—is that his amendment in no way changes Senator Leahy's amendment. So whether you are for or against the Leahy amendment is not a relevant factor in whether you are for or against Senator McConnell's amendment because he does not change the Leahy amendment. He simply says, at that moment in history where we are trying to enhance the quality of financial reporting in corporate America, to protect the investor and to strengthen the economy, that we should make the same changes with regard to financial reporting by labor unions.

There have been several arguments made against this amendment, but I do not believe any of them hold water, at least in terms of my ability to understand the amendment and the arguments.

The first argument that has been made is: There are already requirements that apply to unions, that they have this vast array of reporting requirements.

The same thing is true with corporate America. If you accept that argument that there already is a body of law, and if that means that it should not be improved or strengthened, then what are we doing here?

There are differences over this bill, differences about how the board should be structured, differences about what the board should decide and what Congress should decide, but there is no difference over the issue that we need higher standards in accounting. There is no difference over the issue that people who knowingly violate the law ought to be held accountable.

So to say that unions are subject to requirements is not an argument that we should not have better requirements, because if it were an argument, that would be an argument against the bill; and not one Member of the Senate has bought that argument or made it or believes it.

The fact that there are requirements today does not mean, in a time when we are enhancing transparency and efficiency and honesty in reporting, that we should not improve it for both corporate America and for organized labor.

The second argument that is made is: Companies are public and unions are private. Not only is that argument invalid, but unions are more public than private investments, more public than public companies. Nobody made anybody invest in WorldCom. Nobody made them do that. But in some 40 States of the Union you have to pay union dues in order to work.

I do not think that is right. I think that is fundamentally wrong. I thank God every day that in Texas we have right-to-work laws that say I do not have to join a union to earn a livelihood. But in some 40 States you do.

I think the case is even stronger than the Senator from Kentucky made because nobody made anybody buy WorldCom, but in some 40 States you have to pay union dues. Surely, there is a public interest, in a mandatory institution, in seeing that it keeps straight books.

So this argument that we are talking about, public companies and private unions, what is private about a union that I have to join in order to have a job? Nothing is private about that union. It is as public as something can be public.

It seems to me—and Senator McConnell made the point—nobody made people invest in WorldCom, but people are forced every day to pay union dues. Every day they are forced to pay them. So they are as public as public companies are, I would argue more public, and we have a stronger interest in protecting that money which was involuntarily taken, it seems to me, or just as strong an interest in protecting that money that was involuntarily taken versus money that was voluntarily invested.

The strongest argument of this amendment—and something that is absolutely breathtaking to me—is that the annual report that is

required of unions does not have to be certified and prepared by a CPA.

We are going to great lengths in every bill that has been proposed to set up an independent body to proctor high standards in accounting for CPAs. Shouldn't a union that is handling my money that they took from me involuntarily have its books audited by a CPA?

Why is that important? In fact, why do we care about accounting ethics? We care about them because there is no way the Government has enough resources to spot audit every company in America. So we have to rely on the integrity of the CPA. And it is the problem we have with that today that brings us to the floor of the Senate.

While we are enhancing that integrity through this oversight board, shouldn't we require organized labor that is taking people's money involuntarily to have their annual report certified and prepared by a certified public accountant? How can anybody—how can anybody—argue against requiring a CPA to do these audits?

You could say the Labor Department ought to go out and audit every one of these unions. Clearly, they do not have the resources to do it. The President has asked for more money to do it. I would guess this Congress will not provide that money. I will be watching the appropriations to see if they do. But even if they provide it, it is not enough money to audit every union in America.

What we have to do to bring honesty to union financial reports, as we bring honesty to corporate reports, is to require a CPA to do the audit. I can see no logic whatsoever to opposing requiring a CPA to certify.

Finally, we have gone to great lengths—and I think appropriately—to require the guy who is drawing the big check, the head man or head woman, to sign this annual financial statement to put their credibility on the line and give them nobody to hide behind. Should we not require the president of the union sign this audited report? And shouldn't the annual report be done by a certified public accountant?

Now, it is astounding to me—and, boy, it shows you the different level of enforcement of the law. If anybody does not believe that politics play a part in law enforcement in America, look at the fact that was given to us by the Senator from Kentucky, that 34 percent of unions are out of compliance in terms of filing these reports. Some of them just don't file the report.

It seems to me if 34 percent of the companies in America didn't file reports, we would be outraged, and rightly so. In fact, you couldn't trade your stock on the New York Stock Exchange or the American Stock Exchange or the Nasdaq because of the enforcement that exists in private entities.

The McConnell requirement that the reports be filed is straightforward and reasonable.

I reserve the remainder of my time by simply saying, what harm can come from requiring unions to have CPAs do these reports? I see good can come. I can see no possible harm that could come.

Secondly, why not have the union president certify the veracity of that report just as the corporate president does? Some people say this is punitive. Some people say this is political. If this were being

used to try to kill the Leahy amendment, you might be able to make that argument. But this amendment in no way takes away any part of the Leahy amendment. It simply adds to it that the high standards we set for corporate America should apply likewise to unions.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Maryland.

Mr. SARBANES. Could I ask what the time situation is?

The PRESIDING OFFICER. The Senator from Maryland has 10 minutes.

Mr. SARBANES. And how much time is left to the Senator from Texas?

The PRESIDING OFFICER. The Senator from Texas has a minute and a half.

Mr. SARBANES. Mr. President, it is important, in considering this amendment, to realize there exists now, under the labor management reporting and disclosure procedure, extensive and intensive provisions for reporting by labor organizations, officers, and employees of labor organizations.

If all of these provisions are not being carried out fully, the responsibility rests with the Secretary of Labor. The Secretary of Labor ought to be doing her job. If the Congress is not providing sufficient resources for that, that is an issue for the Congress. We ought to address that issue.

This supposed parallelism that is being argued completely misses the mark in the sense that there is already an existing statutory scheme covering reporting and disclosure by labor organizations.

I want to go through some of those provisions so Members appreciate how extensive they are and the amount of review and oversight that now exists.

I am now reading from the statute:

> Every labor organization shall file annually with the secretary a financial report signed by its president and treasurer—

So much for this argument about they ought to sign, put their signature on the report—

> or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.

Listen to what they have to set out: Assets and liabilities at the beginning and end of the fiscal year; receipts of any kind and the sources thereof; salaries, allowances, and other direct or indirect disbursements, including reimbursed expenses to each officer and also to each employee who, during the fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization.

Ten thousand dollars? Ken Lay of Enron got $177 million. Twenty executives of Enron got over $3 million in salary. Here we are talking about a $10,000 figure which they have to report.

I am reading from the statute that governs labor organizations on their reporting and disclosure: Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the pur-

pose, security, if any, and arrangement for repayment. A $250 loan, $250. Bernard Ebbers of WorldCom got a $366 million loan. This is just to underscore in a sense the tightness of this framework governing the labor organizations—a $250 loan. WorldCom executive Ebbers, $366 million? The Adelphia situation with the Rigas family, $3 billion in loans.

Let's look at the power of the Secretary of Labor to enforce these requirements: Any person who willfully violates this subchapter shall be fined not more than $10,000 or imprisoned for not more than 1 year. Any person who makes a false statement or representation of a material fact or who knowingly fails to disclose a material fact in any document, report required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than 1 year. Any person who makes a false entry or willfully conceals, withholds or destroys books, records, reports shall be fined not more than $10,000 or imprisoned for not more than 1 year.

"Personal responsibility of individuals required to sign report," I earlier said the president and the treasurer of the labor organization had to sign the reports. Listen to this:

> Each individual required to sign reports under sections 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

Of course, we have just noted from the previous provisions, that is a fine and possible imprisonment for up to 1 year. So we have a statutory scheme in place to control the labor organizations. If it is not fully adequate, it needs to be addressed in that context. But clearly, it goes well beyond many of the provisions that apply to corporate officers. It has been carefully worked out over the years. The Labor-Management Reporting and Disclosure Act dates from 1959 originally, with subsequent modifications and adjustments, as we have proceeded.

There is a system in place to govern labor organizations. It has been asserted: Well, the Labor Department has not been able to do everything it needs to do. That burden is on the Labor Department. In a sense, what has been raised represents a challenge to the Secretary of Labor.

If, in fact, the Congress hasn't given her adequate resources, that point needs to be made to the Congress and we need to address that.

But we have established a well-thought-out, comprehensive scheme with respect to the reporting and disclosure of the labor organizations, and if they are falling short of the statutory requirements, that needs to be addressed in the context of the statute.

The Labor Department has enormous authority over the labor organizations. Make no mistake about it, the powers and the authorities that reside in the Secretary of Labor and the Department are quite extensive to deal with the labor organizations. I mentioned only some of them, including these imprisonment for 1-year provisions.

So I am in opposition to the amendment. I think any shortcomings that one might perceive need to be addressed in the context of the reporting and disclosure provisions applicable to labor organizations; and I must say to you—and the Senator from Ken-

tucky has outlined some of the problems—the Department needs to come to grips with them and come to the Congress, if it deems that necessary, to seek an appropriate congressional response in order to deal with them.

I very much hope my colleagues, when the time comes, will not be supportive of this amendment. When all time is used, I am prepared to make a motion with respect to the amendment.

Mr. SPECTER. Mr. President, I am voting against the McConnell amendment because existing law already accomplishes what he seeks to do. There exists now under the Labor Management Reporting and Disclosure Act of 1959 extensive and intensive provisions for reporting by the President and Treasurer of labor organizations.

Furthermore, the audit requirements of this amendment, which apply to union filers with receipts of $200,000 or more, impose under regulation of small entities. Public corporations subject to the SEC typically have many more assets with initial public offerings are customarily in the range of $40 million. The annual costs of compliance might exceed the annual receipts of many filers who would be subjected to these requirements. To require audits of all unions regardless of size or complexity of financial reports would cause an unreasonable burden on many smaller locals who already must file LM-2 reports. Unions with annual receipts of $200,000 or more covered by the McConnell amendment come in an extremely wide range of types, sizes, and of performing services. Of the more than 5,000 labor organizations that currently meet this criterion and file LM-2 reports, only about 70 are national or international unions. The rest are locals—largely voluntary organizations, many with no or few full-time employees. The current Department of Labor reporting requirements take this "no one-size-fits-all" approach into account and build in some flexibility that the McConnell amendment does not allow. For example, many smaller locals do not need to retain outside CPAs because their financial statements are very simple and consistent from year to year.

The amendment's certification requirements are also redundant. For more than 40 years, union officers have been required to sign annual financial reports under penalty of perjury, attesting that the report's information accurately describes the union's financial condition and operations.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me paraphrase our colleague from Maryland. The SEC already has power. Let them do their job. We are not saying that. We are saying they need more power and they need help doing their job because the job is not getting done.

The same is true for unions. The Senator from Maryland said there is already a regulatory scheme. There is already a regulatory scheme for corporate America, but we are saying it is not good enough, not tough enough, it is not working, and we need to improve it.

The same is true for unions. The president of a corporation already has to sign an annual report. We are trying to expand that in this bill. Why not require the president—not other officers, but the president—to sign the report? I submit that illegality, whether

it is $100 million or $10,000, is still theft. The President has asked us to bar loans.

The issue here is, should we have the same integrity standards for unions? I believe the answer is yes.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas has 17 seconds and the Senator from Maryland has 50 seconds.

Mr. MCCONNELL. Mr. President, it is true that unions file a lot of papers. The problem is that accuracy is not required. This requires certified records—certified by a CPA—and it requires the presidents and secretaries of their treasuries to certify that the records are accurate.

Union corruption is a serious problem. This will help correct it. I urge colleagues to support the amendment.

Mr. SARBANES. Mr. President, I only observe that if they file a false statement of representation, they can be fined and sent to jail for up to 1 year. That is a pretty heavy remedy if you stop and think about it.

Mr. President, I yield back the remainder of my time.

Mr. GRAMM. Mr. President, is any time remaining?

The PRESIDING OFFICER. No time remains.

Mr. SARBANES. Mr. President, I move to table the McConnell amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms) and the Senator from Ohio (Mr. Voinovich), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 168 Leg.]

Yeas—55: Akaka, Baucus, Bayh, Biden, Bingaman, Boxer, Breaux, Byrd, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Conrad, Corzine, Daschle, Dayton, Dodd, Dorgan, Durbin, Edwards, Feingold, Feinstein, Graham, Harkin, Hollings, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Reed, Reid, Rockefeller, Sarbanes, Schumer, Smith (OR), Specter, Stabenow, Torricelli, Wellstone, Wyden,

Nays—43: Allard, Allen, Bennett, Bond, Brownback, Bunning, Burns, Campbell, Cochran, Collins, Craig, Crapo, DeWine, Domenici, Ensign, Enzi, Fitzgerald, Frist, Gramm, Grassley, Gregg, Hagel, Hatch, Hutchinson, Hutchison, Inhofe, Kyl, Lott, Lugar, McCain, McConnell, Nickles, Roberts, Santorum, Sessions, Shelby, Smith (NH), Snowe, Stevens, Thomas, Thompson, Thurmond, Warner

Not Voting—2: Helms, Voinovich

The motion was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DIVISION OF AMENDMENT 4174

Mr. GRAMM. Mr. President, I ask for a division of the amendment with sections 801, 802, and 803 in division 1, section 804 in division 2, and the remainder of the amendment in division 3.

The PRESIDING OFFICER (Mrs. CARNAHAN). The amendment is divisible and is so divided.

Mr. GRAMM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Madam President, I would like to put forward a couple of inquiries. Could the Senator outline what his division of the amendment does?

Mr. GRAMM. The amendment was divisible, and my division divided it into three amendments. The amendment having to do with statute of limitations in filing a lawsuit is now division 2. So division 1 would be the pending business, as I understand it. Then division 2, and then division 3, seriatim, unless there was some other agreement that took us to another order or other amendments.

Mr. SARBANES. What does division 3 provide for?

Mr. GRAMM. I sent the division to the desk. Basically, division 1 was everything up to section 804. Then division 2 is 804. And then division 3 is 805 through the end of the bill.

Mr. SARBANES. Did the Senator consider dividing it only for section 804?

Mr. GRAMM. The way it was done, the easiest division was to do it in three parts.

Mr. SARBANES. It is that division you want a separate vote on, I take it?

Mr. GRAMM. It is that division on which I want an opportunity for the Senate to work its will, as well as the others.

Mr. LEAHY. Madam President, if the Senator will yield, there is another way, of course, for the Senate to work its will. The reason I mention it, this is a critical part of the legislation. It is nice to say, and we should say, my cosponsor of the Sarbanes bill, which I think is superb—we should say we should have better accounting methods, we should say we should have more accountability, but we have a lot of these executives who have proven by their past behavior they are not going to do squat unless they think they are going to go to jail for what they do.

The Leahy-McCain, et al, amendment makes it very clear that these people are going to face jail terms if they loot the pension funds, if they defraud their investors, if they defraud the people of their own company. And I might suggest if the Senator from Texas agrees, there ought to be real penalties; let's vote on Leahy-McCain. Let's vote on it, not divide it up. If he believes there is something he may want to do better—such as shield some of these people with a shorter statute of limitations or with a more restrictive statute of limitations—he has every right to do whatever he wants to shield these people. But bring it up as a separate amendment and let the Senate vote up or down on that.

When I look at places such as Washington State alone where the pension funds of firefighters and police lost $50 million because of the fraud of the leaders of Enron, I don't feel too sympathetic. We already have a very short statute of limitations in here anyway. We ought to at least have that so people might be able to recover some of the money they have lost, if it is at all possible, instead of just a few executives going up and building their $50 million mansions and hiding it there.

There ought to be some way for the people who lost their pensions, lost their life savings, to get it back. We ought to have criminal penalties for those who did this in the first place so they end up in the slammer.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, a wonderful speech, and it might be appropriate for another occasion, but what has happened is that a comprehensive bill has been offered as an amendment to the pending bill. All I asked for, which every Senator has the right to ask for, was a division of the question so that the Senate could work its will on individual parts.

I know of no living person, at least anyone who is in the Senate or the executive branch of Government—I don't know about the judicial branch of Government—who is not for the provision related to putting people in jail for knowing and willful behavior where they violate the law.

This bill which has been offered, however, has many different sections. The part I am concerned about has to do with statute of limitations and the security reform legislation we adopted in 1995.

I remind my colleagues that in 1995 we had these massive strike lawsuits. One firm filed 80 percent of them. Almost all were settled out of court. It created an abuse that generated a bipartisan consensus that something should be done about it.

We passed a law, and then, incredibly, with Democratic support, we overrode President Clinton's veto of the bill. The only veto override of the Clinton Administration was on this issue.

One of the reforms had to do with shortening the statute of limitations. I remind my colleagues, this has nothing to do with the SEC or the Justice Department. We are not shortening their statute of limitations. In 1995, when we passed this bill with a strong bipartisan vote, we said: If I want to sue Senator Sarbanes, I have to file the suit within a year of discovering that I believe I have been wronged, or I have to file it within 3 years of when I was wronged. That was the decision we made then.

Now, hidden away in this bill, which has been offered as an amendment, is a provision that effectively extends that to 5 years.

All my division of the amendment did was to say this ought to be dealt with separately so that those who are for mandatory prison sentences for knowing and willful behavior that violates the law can be for that without being for repealing our Private Securities Litigation Reform Act. The reason behind the rules of the Senate that give Members the ability to divide bills goes to exactly the heart of this point; that is, if someone could take a bill—if someone could take——

Mr. SARBANES. Will the Senator yield on that point?

Mr. GRAMM. Let me just finish my point and I will be happy to yield, as I try to always do.

Someone could take the securities bill of 1933 and they could put in it all kinds of things that the vast majority of Members of the Senate are for, and then they could put one little provision in one line in that virtually nobody is for, and they could send it as an amendment to the desk and then we would have no recourse except to vote against all the things that we are for in order to vote against the one little thing that we are against.

It seems to me there is nothing worse in public life than to have someone attack you for voting against a great big old bill and say: Well, you were against. It says here motherhood and the flag and Christmas and Easter—you were against that because you voted against a bill that busted the budget and bankrupt the public.

So in writing the rules of the Senate, we wrote the rules in such a way that when someone offered such a bill as an amendment that had different parts, any Member could ask for a division so it could be dealt with separately. All I have done is exercise that right.

We now have three amendments pending before the Senate—I guess four, counting the Miller amendment—but that is all I have done. Two of these amendments I am supportive of, one of them I am not supportive of, but that is where we are.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, let me say, first of all, the Senator is obviously within his rights to divide the amendment. The Senator could have offered an amendment striking section 804, which is the section to which he objects. As I understand it, he approves of the remainder of the bill. By dividing it, he gains a one-vote advantage because if he moved to strike and we had a tie vote, he would lose. By dividing the bill, if there is a tie vote on section 804 the proponents of that provision lose. So by the division the Senator from Texas has gained a one-vote step up. I recognize that. That is permitted under the rules. I am not complaining about it.

I think it is inaccurate to use an example of the whole bill and say I either have to vote for all of the amendment or none of it because certainly he hasn't been in that position.

He could have offered an amendment to strike the section—am I right; 804 is the section on which the Senator is focused?

I make the following suggestion in order to try to move matters forward, if I could have the attention of my colleague.

Why don't we proceed and adopt the two divisions other than 804 right now and get those taken care of. Then we can address 804, which is the division to which the Senator objects. We can have an appropriate debate with respect to that division.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, we do have someone who wishes to speak. I am not sure whether it is on one of these sections or not. I am not ready to do that right now. We may reach a point where I will be ready to do that, but I am not ready to do that at this point.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, given that the Senator has indicated he is supportive of the Leahy amendment—I think he said

that on more than one occasion—except for section 804, what is it that would have to transpire?

Mr. LEAHY. Madam President, if I might step in for just a moment, if the Senator from Maryland will not mind?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I keep hearing this discussion by the senior Senator from Texas that my bill somehow changed the Securities Litigation Reform Act. It does not. It does not do that at all. It changes no provision in it at all.

The PSLRA did not establish the current statute of limitations. It did not deal with that issue at all. The Leahy bill does not impact on these provisions. It was a 5-to-4 Supreme Court case that overturned years of established law to set the current limitation periods in Lampf v. Gilbertson.

In fact, interestingly enough, former Secretary General Kenneth Starr and I take the same position on these statutes of limitations. In the dissent in that case, two of the dissenters, Justices Kennedy and O'Connor, said the one in three statute of limitation makes the possibility of injured investors recovering basically a dead letter.

Here are some numbers. Florida lost $335 million because of Enron; the University of California, $144 million—all the way down to Vermont; we lost millions of dollars. These are people who would like, in these kinds of cases, at least to have a statute of limitations such that we can go after them.

We are not suggesting changing in any way—I want everybody to be clear on this—we are not suggesting changing the basic standards of the law on a statute of limitation. We are talking about extending the time. We are talking about extending the time so it will not be, as the Supreme Court said, with a short statute of limitations, a dead letter. We are saying we want enough of a statute of limitation—still very short but a long enough one so people can recover. We are perfectly willing to have exactly the same words as the law says now, with the exception the statute is slightly longer.

I cannot speak for an activist Supreme Court that seems to be meddling in most of our laws, but their case law, their stare decisis impacts on every single Federal court in this country—district level, court of appeals level. So there, with the exact same law, the stare decisis is Lampf v. Gilbertson. That would be controlling except it would be a longer statute of limitations.

The Senator from Texas, or anybody else, if they think that statute of limitations is too long, fine, vote against it. But I am here to try to protect people and give them an opportunity—when there has been such enormous fraud and all the pension funds have been lost, and all the people who have lost their life savings—give them at least some chance to recover something, especially as the executives of these companies walk off with tens of millions of dollars. We go two-five instead of one-three.

It makes sense to me. That was negotiated and voted on in the Judiciary Committee, and the final bill was passed unanimously.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I want to resume my discussion with the Senator from Texas. I am not going to engage in a

substantive debate with respect to section 804 of the Leahy amendment, which is division 1 of the divisions the Senator has made.

I want to go back to the prospects of getting division 1 and division 3 accepted, to which the Senator has repeatedly indicated he has no objection. In fact, as I understand it, he is supportive of it.

I renew my inquiry as to whether we could move ahead and accomplish that, since in our previous discussions the Senator has indicated concurrence with the notion that we need to move this legislation along. I don't understand what the objection would be to doing that. The Senator has divided the amendments. He has improved his holding position by doing so with respect to section 804. He has accomplished that objective under the rules. But as I understood it, he does not object to all of the matters in division 1 and division 3. I think it would help move the work along if we could adopt those two divisions, and then we could address division 2.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, first of all, let me say as the ranking member of the committee that I have yet to have an opportunity to offer an amendment. I only have two amendments I want to offer. No one is more eager to get this bill to conference where we might come up with something for which there would be virtually unanimous support. But I assume at some point during the deliberations we will have votes on division 1 and division 3. But I would like to have an opportunity to offer amendments myself.

All I want to do is follow the rules of the Senate.

Let me say that I am concerned, as I listen to colleagues on both sides of the aisle, that we are going to have a literal blizzard of amendments not directly related to this bill. I continue to believe that at some point, in order to finish the bill, we are going to have to file cloture.

I intend, as I said at the beginning of the debate, to support that cloture motion. I think someone would have a hard time portraying me as someone who is slowing down the process when I am ready to vote to bring debate on this bill to an end and force amendments to be germane to the bill itself.

My proposal is that we simply go on with the business of the Senate. I am ready to offer an amendment. I am ready to deal with the amendment of the Senator from Georgia. That amendment is amendable. All of these amendments are amendable. I suggest we simply proceed, let Members be recognized, and have those Members move forward.

In light of that, I send an amendment to the desk in the form of a second-degree amendment to division 1. It is a very short amendment. I think the best thing to do is to have it read.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I have spoken to the manager of the bill. He has indicated he has no problem with someone speaking on the bill as long as there is no effort to do anything in a parliamen-

tary fashion because there are negotiations pending at the present time. We understand that. I ask unanimous consent that the Senator from Illinois be recognized to speak for purposes of debate only.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Following his remarks, the quorum call will be reinstituted.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. I thank my colleague from Nevada as well as the Senator from Wyoming for allowing me to speak to the bill.

I am happy to be an original cosponsor of this amendment with Senators Leahy and Daschle. The Public Company Accounting Reform and Investor Protection Act is a long title, but what it basically seeks to do is to address what most Americans view as one of the most dangerous developments in our Nation's economy in the last several years, if not longer.

When you ask the average American what they think of all this corporate corruption, all of the disclosures about corporations that have literally lied to the public, to their shareholders, to their employees, and to pensioners, people across America say it does not give them much hope for recovery for our economy. It does not give them much confidence in terms of investing in the stock market. And it makes them feel very sad and worried about their own pension and retirement.

We were proud to announce several years ago that almost half of Americans owned stock. We had developed to that point where the average person thought owning stock was a normal thing to do.

I grew up in a family with a mother and father who never once purchased a share of stock until my mother in her later years decided "to gamble," as she called it. But it was unthinkable in their working years to buy stock. They were working people. They worked for a railroad. Workers didn't buy stock.

That has changed. More and more people across America buy mutual funds and stocks, 401(k)s, retirement plans. And why wouldn't they? Look at what happened over the last 10 years. If you were smart enough to buy yourself a dart board and put the Wall Street Journal up on it and throw the dart, just about any stock you hit was going to give you more money.

People came to realize that. They bought their mutual funds and stocks and sat back and relaxed and said: This is easy. I will be able to retire a lot sooner than I ever dreamed, and we have more financial security in our family than ever before.

Boy, have things changed in the last 2 or 3 years. We have seen a recession, the economy slow down, and then we watch as day after painful day reports come of the Dow Jones and the Nasdaq, all the rest of them, hitting new lows every single day.

It has to do with the state of the economy, the recession, but it has to do as much with consumer confidence, the belief that you just can't trust the corporate big boys.

There are too many instances where they decided to cash in with big stock options and walk away with millions—sometimes hundreds of millions—of dollars and leave a floundering corporation. They call it "restatement." When I went to grade school, if I tried

to tell the nuns I wanted to restate something I had said, I never got by with it. I got slapped on the back of the hand with a ruler. They knew it was an admission that you lied, misrepresented something. Now that is commonplace when you deal with corporations across America. Every week, there is some new disclosure.

Senator Leahy, Senator Daschle, and I sat down to say we have to get to the heart of this issue and try to resolve it, in terms of making certain there are penalties in place for those who are deceitful, misleading, lying to the American people about the status of corporations. From Wall Street to Main Street, confidence has been shaken. It started off with Enron, the poster child of runaway corporate greed. Isn't it curious that today, as we debate corporate corruption, and isn't it an oddity that there is an actress in Hollywood who is facing possible jail time for shoplifting and she is facing more time in jail than any officer of the Enron Corporation? What is wrong with this picture? Somebody who shoplifts might go to jail, but not the first person has been indicted at Enron, the seventh largest corporation in America, which goes bankrupt.

We had a series of hearings, and everybody on Capitol Hill was wringing their hands and calling in the cameras, saying we have to do something about it. Yet the Department of Justice has yet to indict the first person at Enron.

So what we are saying with this amendment is that we want to establish standards and practices so that those who violate the law, who are guilty of corporate corruption, will pay a price for it, not just a fine that may be ignored or paid off by the corporation but more.

In our criminal code, we establish mandatory minimum sentences for people who are caught with a thimbleful of cocaine. We will put them in jail, and we won't give the judge any flexibility. They go to jail for x number of years, no ifs, ands, or buts. But if a person is engaged in ripping off stockholders of a major corporation, lying about their books, causing tens of thousands of people to lose their jobs, jeopardizing the retirement plans of millions of Americans, then, frankly, we say to them that yours is going to be a much easier punishment.

What is wrong with this picture? Where are the scales of justice? We should have known, when you have executives and board members who stand to gain millions of dollars from acting on insider information in the corporations they serve, that many would be tempted to do exactly that—especially when they knew there weren't any cops on the beat to keep an eye on them—no auditors, accountants, or government agencies.

In the Gingrich revolution that occurred a few years ago, we passed something called the "Contract on America." One of its provisions said, we are going to take away the power of individuals to sue corporations when there has been securities fraud. The argument was made that there were too many litigious people and greedy lawyers who were meddling in the corporate business and that we had to really close the door to that opportunity. Well, that law was enacted. I voted against it because it took away one more safeguard, one more protection for the public.

Isn't it coincidental that now we stand here and talk about the disintegration of corporate confidence? There were fewer people

watching then, and some of these corporate leaders were reaching into the cookie jar and pulling out with both hands. It happened over and over again. We should have known that when you condition the salary of executives on potential gains from how the company's stock prices will rise—known as options—that would be a temptation to raise the stock prices artificially, especially when those on the inside knew that, as the prices would fall, they would already have their money.

We should have known that when you have auditors and accountants shifting numbers to come up with the right set of bottom-line figures they need to produce for Wall Street, they would be tempted to do that even when the audited numbers didn't add up. We should have known that when you have the smartest lawyers and bankers in the country scheming all night to come up with borderline legal ways to avoid paying taxes through a maze of fictitious straw companies, they would be tempted to do just that, especially when they knew Congress wrote the laws with plenty of loopholes for which their lobbyists paid.

We stand in the Senate and reflect upon the sad state of business in America, and we have to wonder who is really at fault.

Let me add that the vast majority of business leaders in America are honest, hard-working people who have taken a risk in our free enterprise system to produce goods and services of value to our country and to the world, to create jobs and wealth. They deserve our admiration and respect. But, clearly, day after day, week after week, month after month, we read on the front pages of our major newspapers about the exceptions to what I just said.

Is it the executives who are responsible as the bad actors, or their accountants, their auditors, their bankers? The answer is all of the above. Every one of these must face up to their responsibilities.

In due course, I hope we will enact stricter rules for these corporate players. But we have to accept our responsibility; Government and Congress has a responsibility.

I salute Senator Sarbanes of Maryland for what he has done with Senator Enzi in bringing this bill to the floor. There is an effort to divide up this bill in the hopes of changing a statute of limitations.

Why is a statute of limitations of importance in this debate? It really defines the reach of the law. If you tell me there is a statute of limitations that limits the liability of these corporate bad actors, I can tell you some people are going to get off the hook. The Leahy amendment to Senator Sarbanes' bill broadens the statute of limitations so that more wrongdoers will be held accountable; those who have lied, cheated, and stolen will be held accountable.

The opponents of this approach are now suggesting we need to shorten the statute of limitations, limit the inquiry and investigation of the Government, and limit the liability of the bad actors. This is an answer to the prayers of many corporate big wigs who have ripped off their stockholders, employees, and pensioners across America.

This suggestion that we would lessen and shorten the statute of limitations is what they want to hear. Some will now be able to retire to their mansions, and they will be able to live in the lap of

luxury with the hundreds of millions of dollars they have taken from these corporations and never be called to answer for their violations of the law. That is what happens when you shorten a statute of limitations. It is an answer to the prayer of the corporate big wigs' defense attorneys. Why in the world would we be doing that?

Why do we want to insulate from liability the very people who are guilty of wrongdoing? Why would we not support Senator Leahy's amendment to say that those who have violated the public trust, those who have lied, misled, and been deceitful should be held accountable both on a criminal and civil standard?

So I certainly hope that at the end of this debate the Senate, on a bipartisan basis, will stand by Senator Sarbanes and his bill. I also hope that when it is all said and done, the underlying amendment I have offered with Senator Leahy and Senator Daschle will be accepted.

Let me tell you what the amendment does, in brief. It punishes corporate criminals and creates a 10-year securities fraud felony for any "scheme or artifice" to defraud shareholders, and directs the U.S. Sentencing Commission to raise penalties in obstruction of justice cases.

Two, it preserves evidence of fraud, establishes a new felony for destroying evidence when records are under subpoena. It requires key financial audit documents to be retained for 5 years, and it creates a new 5-year felony for intentional destruction of documents.

Do you know what happened? As soon as Enron got in trouble, they called some of their buddies at Arthur Andersen, and the next thing you know, the documents are being shredded, evidence is disappearing. This underlying amendment, the Leahy-Daschle-Durbin amendment, addresses that specifically.

The third thing is that it protects victims. It creates protections for corporate whistleblowers. We need them. If insiders don't come forward, many times you don't know what is happening in large corporations. It lengthens the statute of limitations to 5 years from the date of fraud and 2 years from the date of discovery for victims to bring claims against the corporations. It prevents securities laws violators from using bankruptcy to shield debts based on fraud judgments.

What they are trying to do—I see Senator Leahy in the Chamber; he is the major sponsor of this amendment—is to gut the provision that extends the statute of limitations and say that these people will not have to be held accountable for their wrongdoing.

I urge my colleagues in the Senate to resist this effort. We have to hold these corporate wrongdoers accountable. We should not be party to any kind of effort to reduce their liability; otherwise, what message are we sending? Mandatory minimum sentences for a thimbleful of cocaine, but allowing those guilty of corporate wrongdoing to get off the hook. What is wrong with this picture of justice?

I urge my colleagues to resist the change in the statute of limitations, and I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. SARBANES. Madam President, I suggest the absence of a quorum.

Mr. GRAMM. Madam President, was I recognized?

The PRESIDING OFFICER. The Senator from Texas was recognized.

Mr. GRAMM. Madam President, let me answer what has just been said and straighten out the facts. In 1995, we had a major problem in America in that we had strike lawsuits being filed against high-tech industries where one firm filed 80 percent of the cases and settled almost all the cases out of court.

We had a bipartisan consensus that this represented abuse. So under the leadership of Senator Dodd, Senator Domenici, and others, we passed a bill which President Clinton vetoed. We then overrode the veto. An important part of that reform was to say—and let me make it clear, this does not have anything to do with committing a crime where you can be put in jail. It has nothing to do with the SEC's jurisdiction. It has nothing to do with the Justice Department's jurisdiction. It simply has to do with my right to file a lawsuit against you and anybody else's right to file a lawsuit against anybody else.

We had a lot of reforms in that bill. You had to actually have a client. The lawyer who was the lead lawyer in 80 percent of these cases said he loved these type lawsuits because he did not have to fool with a client. In essence, he was suing on behalf of himself. Virtually a huge percent of the money went to the lawyer filing the suit, not to the people who supposedly had been harmed.

Part of the reform was to set a statute of limitation that if you believe I have done something wrong, and you want to sue me for it, you have 1 year from the time you find it out, or 3 years from when it happens to file a lawsuit.

When the Senator was talking about letting people off the hook, surely everybody understands that our system has no ex post facto laws. So if the provision raising that statute of limitation to 5 years became law, it would have no effect on anybody who has committed one of these violations about which we are talking.

AMENDMENT NO. 4184 TO DIVISION 1 OF AMENDMENT NO. 4174

Mr. GRAMM. Mr. President, having straightened that out, that is not even the subject about which we are talking. We now have three amendments pending, and I send a second-degree amendment to the first amendment and ask for its immediate consideration.

This is a very short amendment and I ask it be read because the language of it is so clear that a lot of times we have an amendment, and what we say does not have much to do with the amendment. I want people to read the language.

The PRESIDING OFFICER (Mr. CARPER). The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. Gramm], for himself and Mr. Santorum, proposes an amendment numbered 4184 to division 1 of amendment No. 4174:

(Purpose: To provide the Board with appropriate flexibility in applying non-audit services restrictions to small businesses)

At the end of the division, insert the following new section:

"SEC. . EXEMPTION AUTHORITY.

"(1) CASE-BY-CASE WAIVERS.—Notwithstanding section 201(b) of this Act. The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

"(2) SMALL BUSINESS EXEMPTION.—The Board may, by rule exempt any person, issuer or public accounting firm (or classes of such persons, issuers or public accounting firms) from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems appropriate consistent with the purposes of this Act.".

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to yield to the Senator from Georgia.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Georgia.

AMENDMENT NO. 4176 WITHDRAWN

Mr. MILLER. Mr. President, I ask unanimous consent that the Miller amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DIVISION 1 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. Mr. President, I withdraw Division 1 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

DIVISION 2 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. I withdraw Division 2 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

DIVISION 3 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. I withdraw Division 3 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

AMENDMENT NO. 4185

(Purpose: To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, and for other purposes.)

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. Daschle], for Mr. Leahy, for himself, Mr. McCain, Mr. Daschle, Mr. Durbin, Mr. Harkin, Mr. Cleland, Mr. Levin, Mr. Ken-

nedy, Mr. Biden, Mr. Feingold, Mr. Miller, Mr. Edwards, Mrs. Boxer, Mr. Corzine, and Mr. Kerry, proposes an amendment numbered 4185.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, first, let me say that we have had a very productive period over the last several minutes, and I think we now are in a position to move to a vote on the Leahy amendment.

Mr. President, I ask unanimous consent that a vote occur on the Leahy amendment at 3:15 this afternoon, and that there be no amendments offered prior to the vote.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. DASCHLE. I thank the Chair.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first, let me say, I am pleased we have reached an agreement on the Leahy amendment. This is one of these little technical things that does not mean much to many people, and it is one where, in fact, there is a dispute, but we have reached an agreement that will allow the Leahy amendment to go forward with certainty on our part that the 2-year statute of limitation is a real statute of limitation, that we simply change the number and that in the process, by the way we do it, we do not do anything that would challenge the current court ruling.

Mr. REID. Will my friend yield for a unanimous consent request?

Mr. GRAMM. I am happy to yield.

Mr. REID. Mr. President, I ask unanimous consent that the time from now until 3:15 be divided equally between the two managers of the bill.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. GRAMM. Mr. President, I thank the majority leader for helping us work this out. I think this will give us the ability now to move forward. As part of this agreement, we will have cloture filed on the bill. While that cloture is ripening, we will continue to consider amendments.

I think this agreement guarantees we will have an opportunity, if not to finish the bill this week, the opportunity to assure that it would be finished early next week.

Let me also say, for the record, I would not object to a unanimous consent request to have the cloture vote today or tomorrow.

From my point of view, we do not need to wait until Friday to have the cloture vote. I would be willing to ask unanimous consent that it be moved up, if that were appropriate. I think that is up to the majority leader, obviously. But from my point of view, we are ready to move and head to conference with this bill.

This one small part of the Leahy amendment I do not think is prudent policy, but there is greater certainty about what it means in terms of the statute of limitations. So I am more satisfied at least in terms of certainty.

I thank Senator Leahy for working this out. There is no doubt about the fact that he had the votes if we could have brought it all to a vote, but I think what we are doing, by working out this simple compromise, is guaranteeing that we are going to pass this bill in short order.

I am hopeful in conference we will be able to bring in the changes the President has proposed. I understand the Republican leader will offer them as an amendment. I will support them. I hope they are adopted unanimously.

But in any case, I think this agreement paves the way to guarantee we will pass this bill, hopefully, this week if not early next week.

Let me say to my colleagues on the Republican side of the aisle, I intend to vote for cloture. I think this is an important piece of legislation. I would do important parts of it differently than Senator Sarbanes, but he is Chairman and I am ranking member; and we have been in the different positions. There is a difference between the two, but we cannot get a bill which I want unless we go to conference.

The House bill is very different. I think we have an opportunity to work out a compromise, just as we did on financial services modernization. Senator Sarbanes opposed it when we dealt with it on the floor of the Senate, but by the time we came back from conference, we got 90 votes. My guess is, we will do as well or better on this bill after going to conference.

So I think we have taken a major step toward moving on. I think it is important. I think the American people want this bill passed. If we were willing to move up the cloture vote, which I am willing to do, we could pass it this week. If not, we will pass it next week.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, would the distinguished senior Senator from Maryland yield me, say, 5 minutes?

Mr. SARBANES. Would the Senator mind if I made a very short statement?

Mr. LEAHY. I would be delighted if the distinguished Chairman did.

Mr. SARBANES. Mr. President, I rise to commend the distinguished Senator from Vermont for the excellent work that he and the Committee on the Judiciary did with respect to the amendment that is now pending at the desk.

This amendment will create tough new penalties to punish corporate fraud. It has very important provisions to protect corporate whistleblowers. Previously, they have been acting under wire and mail fraud provisions. And those are not adequate to deal with se-

curities fraud. The committee recognized that and dealt directly with that question.

The President is talking about doubling the penalties for wire and mail fraud, as I understand it, but did not have a proposal to actually have a securities fraud offense. And that is very important because it would have been very difficult under those other statutes because they are not directly focused on securities fraud.

I think the committee has stepped into what was clearly a vacuum and has filled it in an exceedingly effective and craftsmanlike way.

There are also important provisions in this amendment to prohibit individuals from destroying documents or falsifying records with the intent to obstruct or influence a Federal investigation or a matter in bankruptcy. That is also very important. We have some provisions of that sort but, once again, they are not fully developed or fully focused. The committee, again, has applied itself in order to do that and obviously made a very substantial contribution in that regard.

I also want to touch, very briefly, on the provisions for whistleblower protection for employees of public companies. The legislation, as reported out of the Banking Committee, requires audit committees to have in place procedures to receive and address complaints regarding accounting and internal control or auditing issues and to establish procedures for employees' anonymous submissions of concerns regarding accounting or auditing matters. That was a provision championed by Senator Stabenow. We were very pleased to adopt it.

But Senator Leahy and his colleagues on the Judiciary Committee have moved ahead to provide additional protections and remedies for corporate whistleblowers that I think will help to ensure that employees will not be punished for taking steps to prevent corporate malfeasance.

There are a number of other very important provisions in this legislation of which I am very strongly supportive, but I, in deference to the limitation on time, will withhold with respect to those.

But, again, I thank the able Chairman of the Judiciary Committee and his colleagues for this very important contribution to the legislation we are trying to develop.

Let me simply say it is a pleasure, once again, as we did back in the fall when we did money laundering, to be able to work closely with the committee in furthering the public interest.

I yield the remainder of my time to the Senator from Vermont.

The PRESIDING OFFICER. Thirteen minutes remain for the majority. The Senator from Vermont.

Mr. LEAHY. I thank the distinguished Senator from Maryland. I appreciate his comments also about last fall after the tragedies of September 11. He and I and our committees worked closely on the terrorism legislation. Realizing it was more than simply having a penalty against terrorism, we had to have the tools against terrorism, and the distinguished senior Senator from Maryland was very helpful in putting together the money-laundering legislation so we could come out with a counterterrorism package on which the Senate could vote for 99-1.

That is what we are trying to do today. I am a proud cosponsor of Senator Sarbanes' legislation before the body. After years of experience in this body, I know how helpful it is if you have bills where the jurisdiction of various aspects may be in different committees. And considering having turf battles, when you work together, as we have in the Banking and Judiciary Committees, and others worked, you usually end up with a better package for the Senate.

The final product becomes better and more complete because of our joint work. Having served here for a quarter of a century with the Senator from Maryland, I know such things can be done.

With the members of his committee, he has had to craft a very complex, worthwhile bill on the issue of how do you account, how do you keep records, of all the various things to come under the SEC, to come under the jurisdiction of his committee.

What I am concerned about, from the Judiciary Committee, is, if you get these people, you get them; that if you have somebody who has gone and spent all their efforts to defraud their own company and the pension holders in their company and the investors in their company, that they not walk off scot-free with their mansions in protected States and their offshore money.

When you look at what has happened, when you look at the out-and-out fraud of some of these executives as they have ruined their own company, actually damaged their own country as well, at the same time lining their pockets as if anybody could even have pockets as huge as the amounts of money they have put in, and they walk away scot-free and they say: This is such a tragedy. I hate to see my company collapse like that and tens of thousands of people out of work and all those pensioners gone and all those States defrauded. And I am just going to have to comfort myself for the rest of my life with my $100 or $200 or $300 million I have absconded with.

Their comfort might be a little bit less if they find that those same pension holders and stockholders have the ability to go after the money they are walking away with, and their comfort might be a little bit less if instead of a very large mansion they are in a 12-by-12 cell behind steel doors. Instead of a complacent board of directors, they may have to be dealing with their fellow inmates who may not take very kindly to them.

Why do we have to have that kind of a tough law, and why do we have to have the statute of limitations? Just take a look at this chart. This is what Enron did. Does this look like a company that wants to be transparent in their dealings? Does this look like a company that wants to be on the up and up? These are their off-the-book transactions, hidden debt, fake profits, inflated stock.

What were some of the companies they were hiding this behind? Here is one named Ponderosa. If you look at that, you do not know it belongs to Enron. Or Jedi Capital or Big Doe—that is not D-O-U-G-H—or Sundance or Little River or Yosemite or OB-1 Holdings or Peregrine or Kenobe. I guess Kenobe is a different company than OB-1. And we have Braveheart and Mojave and Chewco and Condor. It seems the only time they had free between trying to hide the money was going to movies, when you look at some of the secret partnerships they created here, Jedi II, OB-1, Kenobe.

My point is, do you think if anybody stumbled across one of these companies they would think for even 1 minute that it belonged to Enron? Of course not. If you were the person who was to protect the pension rights of the employees, do you think if you found Ospry or Zenith or Egret or Cactus or Big River or Raptor you would think the money that was being tucked away and hidden in there could actually belong to the employees of Enron?

But Kenneth Lay comes up here, sidles up to the table where he is going to be called to testify and says: I wish you could know the whole story, but not from me. I am taking the fifth.

Well, he has that constitutional right. But he doesn't have a constitutional right to steal and defraud, and other people like him don't have the constitutional right to steal and defraud and hide the money.

This isn't a question of whether they walk away with only $100 million instead of $200 million. It is a question of a middle-age couple reaching retirement time and having virtually all their retirement save Social Security tied up in a pension fund such as this and seeing it wiped out that day. They are not facing a question of whether they will have $200 million or $100 million. They are going to face the question of whether they can even keep their home, whether they will have the money to visit their grandchildren, or have the money to take care of their medical needs in their old age. That is what we are talking about. Or the people who work so hard, show up for work every single day, help make the fortune for the Ken Lays of the world, but they suddenly find they can't make the mortgage payment, they can't make the car payment, they can't pay for their children's braces. They can't do any of these other things because the big guys have walked off with all the money.

That is why I wrote the legislation I did. I wrote legislation that is going to punish criminals. I wrote legislation that will preserve the evidence of fraud and protect victims.

As one who has prosecuted people, I know nothing focuses their attention more than knowing they will not go to jail. Suddenly that overlooked ethics course when they were getting their MBA, or that overlooked ethics course in the accounting school or law school, they are going to start looking at it again. If they think, because they can walk away from this, they will go to jail, they are going to go to jail. It is not going to be a complacent board of directors they will deal with. It will be a criminal in the cell next door. That is what they have to worry about.

These people deserve to go to jail. They have ruined the lives of thousands of people, good people, hard-working people, honest people. They have destroyed much of the confidence in Wall Street. They have destroyed the confidence in people who should be investing.

I am proud to be an American and proud to be in a country such as ours where you can invest, where people can grow companies, where they can make money if they do the right thing. But I am not proud of these kinds of people who destroy that sort of American dream.

The President says he is outraged. I suspect he is. But I am also outraged. I would hope the President's outrage will go to the point

of supporting this kind of legislation, this kind of legislation which doesn't just say it is wrong for you to do that, but if you do it, you are going to go to jail. Those iron bars are going to close.

We have worked hard on this legislation. That is why I compliment the distinguished senior Senator from Maryland. He and the members of his committee worked very hard. The people of my staff, including Ed Pagano, Steve Dettelbach, Jessica Berry, and Bruce Cohen worked so hard. They brought in people from across the political spectrum, Republicans and Democrats alike, to join us. I think all of those who joined it joined in one basic thing. They set aside their philosophical or partisan differences. They set aside their feelings of party and said they were overwhelmed with feelings of outrage.

Even in my own little State of Vermont, pension funds were damaged because of the excesses of Enron. And then we see WorldCom and Tyco and Xerox, and we say we had better look back 5 years.

That is not the American way. That is the way of some of the most arrogant, self-centered, spoiled criminals. That is what they are; they are criminals. They cooked the books in California during an energy crisis, so millions of people in California paid more for their electricity. Their arrogance was such that they did not care because all of those offshore corporations were hiding the money. Lord knows how much money is still there. You are not going to find out from these executives because they will take the fifth. They have the constitutional right to do that, and I will defend that right, as I will the rights of everybody else. But let us not shed tears for them. Just as Democrats and Republicans will join in voting for this, I call on the President and the Attorney General to step forward and say they support it. And I call on our Justice Department to go forward and find some of these people not just to say maybe we will find a corporation guilty of a crime; let's send some of these people to jail for what they have done. Let's send them to jail, and let's do everything we can to let the people defrauded by them recover some of their ill-gotten gains.

I see the Senator from Michigan has taken over the chair. Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. I note that the Senator from Michigan is a cosponsor of this amendment.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, I think all time has expired on the majority side. I think I have about 13 minutes. I have said all I intended to say. I think we have cleared the way for this bill to be passed. I want to reiterate that when cloture is filed in a few minutes, I will be supportive of having that cloture vote earlier than Friday, which would be the normal time it would ripen. Maybe others would not be supportive of having the vote, and they are perfectly within their rights. I think the agreement we worked out has guaranteed we are going to pass this bill either this week or very early next week.

The net result is that we can go to conference with the House, and we will have an opportunity, I believe, to come back with a strong bipartisan bill. I have to say that I think we have sort of

reached the point where a lot of debate on this issue is more about the next election than it is about corporate integrity. I wonder if the debate has not reached the point where we are hurting equity values by making people fear not only the disease, but the absurd prescription of the doctor that might come from the Government.

I think the sooner we can finish this bill and go to conference and come out with a final product so that people know with certainty what the new rules are and how we are going to go about them, everybody will benefit. I think the only thing that will be lost by invoking cloture is that we will have fewer speeches, we will have fewer opportunities to denounce evil, however we define it, and we will be less likely to get on the 6 o'clock news; but we will also be less likely to spook the markets and more likely to get our job done; we will be more likely to produce a good bill we can all be proud of, not just when we read the editorial in the Washington Post, but when we submit it all to the front-porch-of-the-nursing-home test, as to how we feel about it someday when we are sitting on the front porch of the nursing home.

Mr. HARKIN. Mr. President, our economic system is based on transparency. Investors need accurate financial information about a company so that they can make informed investment decisions. They need information they can trust. Getting honest information requires accountability and honesty from three entities: corporate executives, stock brokers, and public auditors. Clearly, we are seeing breakdowns, if not outright criminality, at all three levels. And it requires additional accountability at all three levels in order to restore investor confidence.

First, we must expect that corporations present an honest portrait of the companies economic health and well-being. Corporate executives who cooks the books are no different than used car salesmen who roll back the car odometers, both are engaged in a fraud. They must be held accountable for their actions and severely punished.

Second, we must expect brokers provide their investors with honest, accurate, and unbiased advice. I stress unbiased. Unfortunately, many brokerage firms have a conflict of interest because they bring in businesses and increase their own profits by pushing bad stocks. One recent report indicated that 94 percent of Wall Street firms continued to recommend stocks for companies that went bankrupt this year up to the very day that companies filed for Chapter 11.

Third, we have to expect that public accounting firms are acting as watchdogs over corporate financial statements. Yet many of the auditing firms, not just Arthur Andersen, have had major failures.

Accounting firms gave a clean bill of health to over 93 percent of publicly traded companies that were subsequently involved in accounting problems within the year. And 42 percent of publicly traded companies that filed for bankruptcy were given a clean bill of health. Clearly, we need fundamental reform at all three levels to restore investor confidence and punish criminal behavior. Some say may say that Enron, Worldcom and the others are a few bad apples. That ignores the much wider, systemic problems that now plague corporate America.

Advocating half measures or saying that we do not need to strengthen the law is like saying that bank robbery should not be severely punished and banks should not have vaults because most people do not rob banks. Well, some people do rob banks. And some corporate executives rip off investors. But they are both criminals and both should be punished accordingly.

I commend Chairman Sarbanes for his accounting reform bill, S. 2673, which is an excellent start at providing for stronger rules regarding accounting procedures. I am also pleased to be an original cosponsor of Senator Leahy's "Corporate and Criminal Fraud Accountability Act," that is now being offered as an amendment. Will some key executives go to jail if this amendment passes? If they are guilty of fraud or destroying evidence of wrong doing, I certainly hope so.

First, the amendment creates a new crime for security fraud and helps prosecutors punish corporate criminality. This amendment is a lot like the "Go to Jail" card in the board game "Monopoly." It says to corporate criminals "go to jail, do not pass go and do not collect $200." The amendment also increases penalties for obstruction of justice. The people who would shred documents to cover up criminal behavior are not better than the "wheel man" in a robbery. They may not have pulled the robbery, but the crook cannot getaway without them. This amendment would make sure the shredders are held accountable as well.

Incidentally, the amendment also lengthens the statute of limitations on these crimes and protects corporate whistleblowers. Corporate criminals should not be allowed to run out the clock and avoid prosecution. And workers who discover corporate fraud should be protected just as we protect government whistleblowers. I believe this amendment will go a long way toward preventing corporate crime and prosecuting those who would rip off their stock holders and employees. Restoring confidence and punishing criminal behavior is in everyone's best interest—honest corporate executives, their employees, investors, and the public at large. I urge adoption of the amendment and look forward to seeing it become law.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

Under the previous order, the question is on agreeing to amendment No. 4185. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), the Senator from Ohio (Mr. Voinovich), and the Senator from Idaho (Mr. Crapo), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 169 Leg.]

Yeas—97: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Craig, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Warner, Wellstone, Wyden

Not Voting—3: Crapo, Helms, Voinovich

The amendment (No. 4185) was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4186

Mr. DASCHLE. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. Daschle], for Mr. Biden and Mr. Hatch, proposes an amendment numbered 4186.

Mr. DASCHLE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and certain ERISA violations, and for other purposes)

At the end, add the following:

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(2) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the Chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) Technical and Conforming Amendment.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

Mr. DASCHLE. Madam President, I know there are a number of Senators who wish to be recognized to offer amendments. I think

Senator Lott would like very much to offer an amendment as well. What I would like to do is to propound a unanimous consent request involving a number of Senators who have amendments to be offered so they will know the sequence. I know Senator Edwards has been waiting a long time to offer an amendment, as well as Senator Levin, Senator Schumer, Senator Gramm, and Senator McCain. Perhaps in the next couple of minutes we can put together a unanimous consent request which will sequence these amendments so Senators will know they are protected and have the opportunity to then have their amendments called up. I ask that all of our colleagues work with us over the course of the next few minutes.

I yield the floor to accommodate Senator Lott's interest in offering his amendment. We will lay aside the Biden amendment temporarily as that amendment is considered as well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, first, I thank Senators Sarbanes, Gramm, and Leahy for the work they have put into moving through the amendment on which we just voted. That allows us to move on to other germane or important amendments that will be offered.

AMENDMENT NO. 4188

Madam President, I understand the Biden amendment will be set aside. So I send to the desk my amendment.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside, and the clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. Lott] proposes an amendment numbered 4188.

Mr. LOTT. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To deter fraud and abuse by corporate executives)

At the appropriate place, insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking "five" and inserting "ten".

(b) WIRE FRAUD.—Section 1343 is amended by striking "five" and inserting "ten".

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

"shall be fined under this title or imprisoned not more than ten years, or both."

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

"(3) TEMPORARY FREEZE.—

"(A) Whenever during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

"(B) If the individual affected by such order is charged with violations of the Federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking "This" and inserting "Paragraph (1) of this".

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

"( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the

Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer."

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

"( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer."

AMENDMENT NO. 4189 TO AMENDMENT NO. 4188

Mr. GRAMM. Madam President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. Gramm] proposes an amendment numbered 4189 to amendment No. 4188.

Mr. GRAMM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To deter fraud and abuse by corporate executives)

Strike all after the first word, and insert the following:

HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking "five" and inserting "ten".

(b) WIRE FRAUD.—Section 1343 is amended by striking "five" and inserting "ten".

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

"shall be fined under this title or imprisoned not more than ten years, or both."

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

"(3) TEMPORARY FREEZE.—

"(A) Whenever during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that

the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

"(B) If the individual affected by such order is charged with violations of the Federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 46 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking "This" and inserting "Paragraph (1) of this".

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

"( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer."

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

"( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer."

Mr. DASCHLE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4186, AS MODIFIED

Mr. DASCHLE. Madam President, I think we are working through the number of procedural issues with which we have to deal. I want to make sure we are in a position to be able to complete that work. So I call for the regular order.

The PRESIDING OFFICER. Amendment No. 4186 is pending.

Mr. DASCHLE. I modify the original amendment that I offered with the changes that are at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 117 in line 12 strike "Act" and insert the following: Act.

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";
(2) by striking "one year" and inserting "10 years"; and
(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the Chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

Mr. DASCHLE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4190 TO AMENDMENT NO. 4186, AS MODIFIED

Mr. DASCHLE. Madam President, I send up an amendment in the second degree.

What we have done now is to assure that both the Biden amendment and the Lott amendment will have an opportunity to be considered and debated. I am hoping we might even be able to continue to work to see if we can have one vote rather than two.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. Daschle], for Mr. Biden, proposes an amendment numbered 4190 to amendment No. 4186, as modified.

The amendment is as follows:

(Purpose: To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and certain ERISA violations, and for other purposes)

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(2) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sen-

tencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the Chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

This section shall take effect one day after date of this bill's enactment.

Mr. DASCHLE. Madam President, I yield the floor. It is my understanding Senator Biden and Senator Lott would both like to address their amendments. I yield for that purpose now.

The PRESIDING OFFICER. The Republican leader.

AMENDMENT NO. 4188

Mr. LOTT. Madam President, if I could describe my amendment briefly. I understand Senator Biden is prepared to do the same thing.

First, I should note, in at least one area they overlap in what they propose. In some other areas, there are some differences. But I don't see there are major problems.

Senator Biden's amendment, as I understand it, just from looking at it quickly, would increase penalties in some areas that are not included in my amendment. What this amendment would do, though, is increase penalties for corporate fraud.

Section 1 would increase maximum sentences for fraud. Mail fraud and wire fraud statutes are often used in criminal cases involving corporate wrongdoing. So obviously this is an area that is of concern and needs to be addressed. This section proposes doubling the maximum prison term for these crimes from 5 years to 10 years by amending 18 U.S.C. sections 1341 and 1343.

The second section would enact stronger laws against document shredding. Current law prohibits obstruction of justice by a defendant acting alone, but only if a proceeding is pending and a subpoena has been issued for the evidence that has been destroyed or altered. Timing is very important.

Most people understand that shredding documents is a very bad thing to do. Obviously, you cannot do it if there is something pending or if there is a subpoena. But as was the case recently, they knew that an investigation was underway and a subpoena was likely, and the shredding of documents went forward.

So this section would allow the Government to charge obstruction against individuals who acted alone, even if the tampering took place prior to the issuance of a grand jury subpoena. I think this is something we need to make clear so we do not have a repeat of what we saw with the Enron matter earlier this year.

Section 3 freezes payments of potential wrongdoers. This section would allow the SEC, during an investigation, to seek an order in Federal court imposing a 45-day freeze on extraordinary payments to corporate executives.

Again, this year we have seen just that sort of thing happening. While an investigation is underway, basically rewards were given to these corporate executives. While it would require a court order, there would be this 45-day freeze.

The targeted payments would be placed in escrow, ensuring that corporate assets are not improperly taken from an executive's personal benefit.

If an executive is charged with violations of Federal securities laws prior to the expiration of the court order, the escrow would continue until the conclusion of legal proceedings, again, with court approval.

Section 4 involves sentencing guideline enhancements for crimes committed by corporate officers and directors. This section would implement President Bush's call on the Sentencing Commission to quickly adopt the new "aggravating factor" to provide stronger penalties for fraud when the crime is committed by a corporate officer or director. This "aggravating factor" is a term of art used in the law. It would provide, under this section, stronger penalties for such fraud.

Section 5 would bar corporate officers and directors who engage in serious misconduct. Under current law, only a Federal court can issue an order prohibiting a person from acting as an officer or director of a public company.

The SEC cannot order this remedy in its own administrative cease-and-desist proceedings, even in a case of securities fraud where the person's conduct would otherwise meet the standards for imposing such a bar. This section would grant the SEC the authority to issue such orders if a person had committed securities law

violation and his or her conduct demonstrated unfitness to serve as an officer or a director.

These points are all points that were made by the President, asking that legislation be provided to provide for these additional increases and strengthening of the law. We have found clearly that in recent events there has been improper conduct. There have been questionable accounting procedures, and there has probably been some illegal conduct. So you can put all the laws in the world on the books, but if people act in bad faith, violate the law, you can never legislate morality.

We have also seen that there are some cases where the law had some loopholes or where it was not timely or where it was not strong enough. One example, of course, is where there has been shredding. Another example is the very bad image of corporate executives taking increased payments, extraordinary payments, while they are being investigated. You can't have that sort of thing.

I think these are basic things that should be added to this bill. It would strengthen the bill. I have checked with a number of Senators on both sides of the aisle. There is general support for this legislation.

I thank Senator Biden for allowing me to make this brief statement about the amendment. Again, I emphasize that there are some similarities between this amendment and his amendment, but he does add additional penalties beyond what is in this proposal. But I did want to put into the bill what the President specifically recommended.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Delaware.

Mr. BIDEN. Mr. President, this amendment is from Senator Hatch and me. He had as much input in this as I had. Let me respond in the spirit in which I was asked to do this and explain what the Biden-Hatch amendment does and then yield to my colleague to make any additional statements.

Based on what Senator Lott has just pointed out, he has indicated that there are four basic sections to his amendment. On the first one, doubling the penalties for title 18, sections 1341 and 1343, that is exactly the same provision that is in the Biden-Hatch bill.

Secondly, making it a crime for document shredding: If I am not mistaken, that is in the Leahy amendment we just passed and that I cosponsored, as well as many others.

The third part of the amendment discussed by the Republican leader is something with which I happen to agree. It is not in either the Leahy bill just passed or in the Biden-Hatch amendment. That is the 45-day freeze on corporate executives' extraordinary income based upon the SEC being able to hold that in escrow and freeze it for 45 days while they look at it. I, for one, would be willing—I will yield to my colleague from Utah at the appropriate time—to accept that or join that in our amendment.

Fourth, the Sentencing Commission provisions that were referred to by my friend from Mississippi are in the Biden-Hatch bill. There is only one piece of the legislation of the Senator from Mississippi, as I understand it, based on the summary, that is not either already passed or included in Biden-Hatch.

But there are three areas that are not included which we think are very important. One is in section 2 of our legislation, which relates to conspiracy. Under title 18, section 371, the maximum penalty for general conspiracy to commit a crime is 5 years in prison regardless of whether the penalty for the predicate offense—that is, the thing they are conspiring to do—is considerably more than 5 years. So what Senator Hatch and I do is we allow the penalty for conspiracy to be consistent with what the penalty would be for the underlying crime; that is, the predicate crime. That is not included in the amendment of the Senator from Mississippi.

Also, a very important provision of Biden-Hatch is that right now, under ERISA, the Employment Retirement Security Act of 1974—we were both here to vote for that—under current law, a violation for essentially squandering someone's pension to the tune of tens of millions, maybe billions, of dollars is a misdemeanor with a maximum penalty of 1 year. If you were to steal an automobile from my driveway, which is about 2 miles from the Pennsylvania line, drive it across the Pennsylvania line, under Federal law, it is a 10-year sentence. There is obviously a bizarre disparity.

What we do is we increase the penalty for criminal violation of ERISA to 1 to 10 years, based upon the value of what is stolen in ERISA. If the loss in ERISA is a $20,000 pension versus several billion dollars' worth, the Sentencing Commission can make that judgment, as they do now, to have the penalty be from 1 but up to 10 years. That is not in Senator Lott's amendment.

Lastly, section 6 of Biden-Hatch. Currently, the Securities and Exchange Commission requires regulated companies to file periodic financial reports with the SEC. This section of Biden-Hatch creates a new section in title 18 of the United States Code to require certification, signed by the top officials of that corporation, that the financial reports being filed accurately reflect the financial condition of the company. Criminal penalties are created for failure to comply with this section. Reckless failure to certify—you have to be able to prove it; it is a high standard—requires a penalty of up to 5 years, while a willful failure to certify on the part of these executives includes a maximum penalty of up to 10 years.

The point is, A, everything but one provision of Senator Lott's amendment either has been passed or is in Biden-Hatch. I will yield to my colleague, but I am willing to accept the one provision that is not included. That is the provision relating to freezing payments for up to 45 days under the authority of the SEC of compensation packages that are excessive so there is time to look at it. I am willing to accept that.

It does not include three sections: Conspiracy, the ERISA increased penalties, and the requirement of certification that the financial reports accurately reflect the financial condition of the company, with penalties to prevail if in fact they either recklessly or willfully do not sign such a document or they recklessly or willfully signed it and it does not reflect what in fact they say it reflects.

That is a response to the majority leader's request of what the difference is. That is the difference.

I now yield, with the permission of my colleagues, to the Senator from Utah, and I might add, this is not original stuff of Joe Biden;

this was Hatch and Biden, Biden and Hatch. He takes equal responsibility for this. If we are wrong, we are equally wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am proud to stand here with my colleague from Delaware, who is one of the truly remarkable Senators who knows as much about criminal law as anybody in this body or in the Congress itself.

I also rise today and applaud President Bush and Senator Lott, as well as Senator Biden, for offering what really, combined, will be a comprehensive legislative proposal that calls for harsh, swift punishment of corporate executives who exploited the trust of their shareholders and employees while enriching themselves.

Senator Biden and I have worked together for years now on many important pieces of legislation. This is not new for us. I always feel good when I can work with my colleagues on the other side. It is always a pleasure to work with him. I commend him for the care and attention he has given to the subject of white-collar penalties, as well as for his leadership in this area. Just in the past 4 weeks, Senator Biden scheduled two hearings to review the adequacy of current penalties for white-collar criminal offenses. I am thankful that he did so for I think this is a critically important area for us to focus on, especially in today's unprecedented climate of market turmoil and corporate responsibility—or should I say irresponsibility.

All of us well know that the past few months have been painful ones for our Nation's financial markets. At least some of the blame can be laid at the doors of some multibillion-dollar corporations, their highly paid executives, and the accounting firms that were supposed to assure the public's trust. We learn—each week it seems—of more and more accounting and corporate fraud and irregularities that have caused billions of dollars of losses to innocent investors. I am personally outraged by these scandals.

The amendment I cosponsor today is a product of much thoughtful attention and scrutiny. No Member feels more strongly than I do about the importance of our criminal laws. They must be fair, and they must be just. If our criminal laws are to bear credibility and provide deterrence, they must adequately reflect the severity of the offenses. But right now they do not do so in the context of so-called white collar crimes. They are, to put it bluntly, out of whack.

A person who steals, defrauds, or otherwise deprives unsuspecting Americans of their life savings—no less than any other criminal—should be held accountable under our system of justice for the full weight of the harm he or she has caused. Innocent lives have been devastated by the crook who cooks the books of a publicly traded company, the charlatan who sells phony bonds, and the confidence man who runs a Ponzi scheme out there. These sorts of white-collar criminals should find no soft spots in our laws or in their ultimate sentences, but all too often they have done so.

It is time for us to get tough with these offenders. We need to make crystal clear that we will not tolerate this sort of outrageous criminal conduct, conduct that not only devastates the savings of citizens, but also has lasting effects on the entire world's confidence

in our American financial markets. This amendment will take away the soft landings these criminals have expected and obtained for far too long.

The amendment Senator Biden and I propose—with the acceptance of the additional language of the President and Senator Lott—makes several notable improvements to current law. As Senator Biden said, and I will reiterate, first, our amendment increases the maximum penalties for those who commit mail fraud, wire fraud, and ERISA offenses, as well as those who conspire to violate Federal criminal laws. These changes are long overdue. The maximum penalty under current law for most of these offenses is 5 years, which is the same as the maximum penalty that could be handed down for mutilating a coin produced by the U.S. Mint. The current maximum penalty for ERISA fraud violations is just 1 year. In other words, a fraud committed in connection with employment retirement plans, no matter how severe or wide, is punishable now only as a misdemeanor. Under current law, one could get 5 years for scratching George Washington's face off a quarter but only 1 year for defrauding an entire company's pension plan. It goes without saying that we need to fix this problem.

Think about it. Pension plans go down the drain because of dishonest business people, which is sometimes hundreds of millions of dollars. Think of all the people who lose as a result of that.

Second, our amendment would make corporate officials criminally responsible for their public filings with the SEC. Make no mistake, these filings are critically important to investors who rely upon them to make decisions affecting how they should invest billions and billions of dollars. They need to be accurate. Our amendment makes it possible to hold somebody criminally accountable if they are not accurate.

Third, our amendment directs the U.S. Sentencing Commission to review the adequacy of current guidelines for white-collar offenders. We heard just a few weeks ago from the Department of Justice that these types of criminals often get off with a slap on the wrist and that judges too often do contortions to avoid handing down terms of imprisonment. This simply is not good and will not do. It undermines the deterrent effect of our criminal laws, makes a mockery of our system of fair and evenhanded justice, and ultimately sends the wrong message to all Americans. Our amendment will ensure that the Sentencing Commission will take steps designed to ensure that our system of justice no longer coddles criminals simply because they "just" steal.

It is time for the Senate to act on this important matter of fraud and responsibility. I think these amendments are a big step in the right direction. I compliment the President, Senator Lott, and, of course, my dear friend and colleague from Delaware, Senator Biden, for the work they have all done on these two amendments. I agree with Senator Biden that we are willing to accept that part of the preference package.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I object for the moment. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4190, AS MODIFIED

Mr. BIDEN. Mr. President, I ask unanimous consent to modify the Hatch-Biden amendment by changing on page 6 of our amendment, under the title "Failure of corporate officers to certify financial reports," line 19—it presently reads:

(1) any person who recklessly violates any provision of this section. . . .

I ask unanimous consent to amend it to say on line 19, subsection 1:

Any person who recklessly—

And add the words "and knowingly"—

recklessly and knowingly.

Page 6, line 19, fourth word in, add as a fifth word "and" and the sixth word "knowingly."

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is so modified.

The amendment, as modified, reads as follows:

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";
(2) by striking "one year" and inserting "10 years"; and
(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the Chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

This section shall take effect one day after date of this bill's enactment.

Mr. BIDEN. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent that the pending second-degree amendments be withdrawn; that no second-degree amendments be in order to either of the two pending first-degree amendments; that the Daschle for Biden amendment No. 4186 be further modified with the changes that are at the desk; that the time until 4:45 p.m. today be for debate in relation to the pending first-degree amendments; that the time be equally divided between the two managers or their designees; that at 4:45 p.m., without further intervening action or debate, the Senate proceed to vote in relation to the Daschle for Biden amendment No. 4186, as further modified; that upon disposition of that amendment, the Senate vote in relation to the Lott amendment No. 4188; provided further that upon disposition of these amendments, Senator Edwards be recognized to call up amendment No. 4187.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Reserving the right to object, I ask the manager of this bill, the Chairman of the committee, to insert after the words "Senator Edwards be recognized to call up amendment No. 4187," that following the disposition of that amendment, Senator Gramm be recognized.

Mr. GRAMM. Following.

Mr. REID. That is right. We were sequencing this, that following Senator Edwards, Senator Gramm be recognized; following that, Senator Levin be recognized; and following that, Senator Gramm be recognized.

The PRESIDING OFFICER. Does the Senator from Maryland so modify his request? Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 4189, and 4190, as modified) were withdrawn.

The amendment (No. 4186), as further modified, reads as follows:

On page 117 in line 12 strike "Act" and insert the following: Act.

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object

of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(2) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the Chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

Mr. BIDEN. Mr. President, I rise today—along with my good friend, Senator Hatch—to offer our bill, the White-Collar Penalty Enhancement Act of 2002 as a second-degree amendment to amendment No. 4174, Senator Leahy's amendment to S. 2637.

Let me begin by applauding Senator Sarbanes for his leadership in sponsoring S. 2637, and guiding it through his Banking Committee with a 17-4 vote. It is my hope and expectation that it will win the same overwhelming support on the floor of the Senate. I also commend Senators Leahy and Daschle for offering the Corporate and Criminal Fraud Accountability Act, of which I am a cosponsor.

Let me briefly recount the events which bring me to the floor today to offer this amendment to increase penalties on white collar criminals. In recent months, dramatic events have shaken our country out of complacency. A decade of peace and prosperity came to an end, first with a shattering reminder of our vulnerability to external threats, and then with a series of spectacular corporate collapses that revealed cracks in the very foundation of our economic system.

Our response to terrorism was to come together as a Nation, reminded of all we have in common, all we have to be proud of.

The shock of those high-flying corporations falling spectacularly to earth presents us with different problems. We have to examine our own system—the capitalist system that has brought us so much material success, the envy of the rest of the world.

As the stock market continues to lose value, as the dollar has dropped to a 2-year low, we know that investors, here at home and abroad, have lost some of their faith in the American economy.

That loss of faith has a material impact of the wealth of this country, as our currency and our securities lose value. Some observers worry aloud that a full-blown loss of faith in our economy could drain even more value from our markets.

The task before us is nothing less than restoring confidence in our market economy. There are many facets to this problem.

One is reforming the auditing process. On the Senate floor right now is the Sarbanes bill that is essential to any effort to restore investor's faith in our markets. Audit firms are supposed to be independent voices, providing disinterested information that investors need to assess risk and to allocate funds to those companies that will have the best chance of raising our standard of living.

We need more transparency, more accountability in the conduct of accounting firms, and more confidence that they have access to, and are willing to tell us, the truth about the businesses they audit. Senator Sarbanes has done us all a service by bringing this bipartisan bill to the floor.

Yesterday, I was hoping to hear the President support this bipartisan approach to reform, reform that is supported by the business community in the form of the Business Roundtable, when he spoke

yesterday. I still hope he will soon add his voice in support of this landmark reform.

Just as important is the amendment to the Sarbanes bill that I am cosponsoring with Senator Leahy. It will put real teeth in securities fraud enforcement, providing substantial criminal penalties for those who defraud investors of publically traded securities or who destroy evidence to obstruct justice.

Yesterday, the President announced his support for tougher criminal penalties for fraud offenses. I applaud the President's call for increase penalties for wire and mail fraud, and my amendment contains identical provisions. But I am concerned that the President's proposals do not go far enough.

For example, in the wake of the publicly reported problems at Enron, WorldCom, and other companies, we need to restore people's faith in their pension plans. They need to know that the companies they work for will treat them fairly, handle their funds wisely, and that the investments made by pension funds are sound. Yet, I believe that the criminal penalties for violations under the Employment Retirement Investment Security Act of 1974, ERISA, limited to 1 year in jail, are woefully inadequate to protect defrauded pensioners.

As Chairman of the Judiciary Subcommittee on Crime and Drugs, I held a hearing several weeks ago—and am holding a second hearing this afternoon—on the adequacy of criminal penalties to deter this type of corporate wrongdoing. Corporate executives who defraud investors by whatever means should go to jail—period—and we need to give investigators and prosecutors the tools they need to send them there.

One thing most of our hearing witnesses agreed on was that there is a "penalty gap" between white collar crimes and other crimes. For example, if a kid steals your car and drives it over the 14th Street Bridge into Northern Virginia, he could get up to 10 years in jail under the Federal interstate auto theft law. Yet, if a corporate CEO steals your pension and commits a criminal violation under ERISA, he is only subject to 1 year in jail.

At my hearing, we heard from Charlie Prestwood, a 63-year-old Enron retiree, who lives in Conroe, TX. Charlie worked proudly for some 33 years for that company, saved and invested in his pension, and retired with about $1.3 million in his plan. Within a few tragic months, that was nearly wiped out—only $8,000 remained. Charlie is not a lawyer, but he had the good sense to know that its just not fair that a car thief who steals a jalopy can get 10 years in prison and a Gucci-clad corporate crook can steal a person's life savings and might only end up with 1 year in prison.

Accordingly, the amendment that Senator Hatch and I offer today is carefully crafted to hold corporate officer responsible and to reduce the "penalty gap" between a number of white collar crimes and other serious crimes. It does 3 basic things.

First, it goes beyond President Bush's proposal by raising penalties for those white collar crimes that are most often violated but which have insufficient penalties to deter corporate crooks. For example, it raises the maximum penalties from 1 to 10 years for ERISA criminal violations. It double penalties for wire and mail fraud from 5 to 10 years, and it treats white collar who conspire

with others like drug king pins, by mandating that they receive the same maximum penalty for the offense underlying the charged conspiracy, rather than their sentence being capped at a 5-year penalty as exists under current law.

When these penalty enhancements are taken in combination with the new 10-year felony for securities fraud contained in the amendment I have co-sponsored with Senator Leahy, the Government will have the full range of prosecutorial arrows in its quiver to fight pension crooks and corporate wrong doers. Respectfully, the President's penalty proposal is only one small piece of the white collar crime-fighting puzzle.

Second, our amendment tells corporate big wigs that they are no longer off the hook for their companies misdeeds. My amendment requires top corporate officials to certify to the Securities and Exchange Commission that the periodic financial reports filed by their companies with the Commission accurately reflect the financial health of these corporations. Reckless failure by a corporate official to do so will result in up to 5 years in prison, while willful failure to do so will trigger a jail term of up to 10 years.

Third, our amendment directs the U.S. Sentencing Commission to review and amend the Federal sentencing guidelines to lengthen sentences for white collar criminals to reflect these new, more serious penalties. It also directs the Commission to impose sentencing enhancement where corporate officials defraud victims. I applaud President Bush for announcing a similar proposal.

Make no mistake—this amendment will not stamp out white collar crime. We live in a fallen world where bad people do bad things—whether its stealing cars or stealing pensions. But, its time to "level the playing field" between white collar and blue collar criminals.

I believe the amendment that Senator Hatch and I are offering will move us substantially in the direction of deterring corporate wrongdoers by holding them responsible for the criminal acts. It will also begin the restoration of confidence in our financial markets. We must do both. The time to act is now. I urge my colleagues to support this amendment.

I yield the floor.

AMENDMENT NO. 4188

Mr. HATCH. Mr. President, I want to applaud President Bush and Senator Lott for offering a comprehensive legislative proposal that calls for harsh, swift punishment of corporate executives who exploit the trust of their shareholders and employees, while enriching themselves.

This bill, which tracks the President's recent proposal, increases the criminal penalties that apply to fraud statutes that are frequently used to prosecute corporate wrongdoers. It also strengthens an existing obstruction of justice statute, and calls for an aggravated sentencing enhancement for frauds perpetrated by corporate officers and directors. Finally, it increases the Security and Exchange Commission's administrative enforcement tools by strengthening the SEC's ability to freeze improper payments to corporate executives while the company is under investigation, and by ena-

bling the SEC to bar corporate officers and directors from continued service where they engage in serious misconduct.

I support these provisions because I strongly believe that it is critical that we hold corporate executives accountable for acts of wrongdoing. We can do so by supplying the SEC and Federal prosecutors with the civil and criminal tools they need to investigate and prosecute acts of corporate misconduct.

Let me briefly elaborate on some of the specific provisions contained in this bill.

First, as I mentioned, the bill doubles the maximum prison term for mail and wire fraud offenses, from 5 years to 10 years. This is identical to a provision Senator Biden and I have included in our amendment. This is a necessary sentencing enhancement, and one that is long overdue. Because prosecutors frequently use the mail and wire statutes to charge acts of corporate misconduct, it is important that we ensure that the penalties that apply to such offenses are sufficiently severe to deter and punish corporate wrongdoers.

Second, like the suggested enhancement contained in the bill Senator Biden and I have proposed, this amendment directs the U.S. Sentencing Commission to review the sentencing guidelines that apply to acts of corporate misconduct and to enhance the prison time that would apply to criminal frauds committed by corporate officers and directors. As I have stated, I strongly support such an enhancement because corporate leaders who hold high offices and breach their duties of trust should face stiff penalties.

Third, the amendment strengthens an existing Federal offense that is often used to prosecute document shredding and other forms of obstruction of justice. Section 1520 of Title 18 of the United States code currently prohibits individuals from persuading others to engage in obstructive conduct. However, it does not prohibit an act of destruction committed by a defendant acting alone. While other existing obstruction of justice statutes cover acts of destruction that are committed by and individual acting alone, such statutes have been interpreted as applying only where a proceeding is pending, and a subpoena has been issued for the evidence that is destroyed.

This amendment closes this loophole by broadening the scope of the Section 1512. Like the new document destruction provision contained in S. 2010, this amendment would permit the government to prosecute an individual who acts alone in destroying evidence, even where the evidence is destroyed prior to the issuance of a grand jury subpoena.

Prosecutors in the Andersen case succeeded in convicting the corporation. However, in order to do so, they had to prove that a person in the corporation corruptly persuaded another to destroy or alter documents, and acted with the intent to obstruct an investigation. Certainly, one who acts with the intent to obstruct an investigation should be criminally liable even if he or she acts alone in destroying or altering documents. This amendment will ensure that individuals acting alone would be liable for such criminal acts.

This amendment also includes new statutory provisions that will strengthen the SEC's ability to freeze improper payments to corporate executives while a company is under investigation. These

provisions would prevent corporate executives from enriching themselves while a company is subject to an SEC investigation, but before the SEC has gathered sufficient evidence to file formal charges.

In particular, these provisions would enable to SEC to freeze improper payments by obtaining a Federal court order. The order, which could last for 45 days and be extended upon a showing of good cause, would freeze extraordinary payments to corporate executives and require that such payments be escrowed. And where an executive is charged with a securities law violation prior to the expiration of the court order, the escrow would continue, with court approval, until the conclusion of legal proceedings.

Finally, the amendment grants the SEC the authority to bar individuals who have engaged in serious misconduct from serving as officers and directors of any public company. Under current law, only a court may order an officer and director bar. In an SEC enforcement action, a court may issue an order that bars a person from acting as an officer or director of a public company where the person has committed a securities fraud violation, and his or her conduct demonstrates "substantial unfitness" to serve as an officer or director. However, under current law, the SEC cannot order this remedy in an administrative cease-and-desist proceedings, even where the person's conduct would otherwise meet the standards for the bar.

This amendment would enable the SEC to issue such a bar where the officer or director has committed a securities law violation and his or her conduct demonstrates "unfitness" to serve as an officer or director. This will give the SEC the ability to punish an officer or director who has committed an unlawful act, where it has not yet instituted an enforcement action.

I strongly believe that if Congress and the President act together to increase corporate transparency and to enact tough civil and criminal provision, we will succeed in restoring confidence in our market economy. The Federal government plays an important role in upholding and enforcing standards of corporate conduct. I look forward to working with my colleagues and with the President to enact needed legislation to strengthen corporate accountability.

Mr. GRAMM. Mr. President, let me try to explain where we are. We are about to have two votes. One vote is on a bipartisan amendment that was put together prior to our receipt of the language of the President's proposal. That was done by Senator Biden and Senator Hatch. That amendment will be voted on first.

I believe that amendment deals with the same subject area as the President's proposal. The overlap is not perfect, but when you take Senator Leahy's amendment that we have already adopted, when you take this amendment, the things that are covered in the President's proposal are covered.

We also have the legislative language proposed by the White House to follow on the proposals the President made yesterday in New York.

When we adopt these two amendments, we will have added a substantial amount to the underlying bill. We will have added, in essence, two different variants of the President's proposal of yester-

day. I assume we will get a unanimous vote for both of these amendments. I commend to my colleagues to vote for both of them.

At that point, we will proceed in the outline we have. It is my understanding we will try to put together an additional list, depending on the amount of time we have. Once these two votes are taken, the subject matter of the President's proposal of yesterday will be part of this bill. I commend to my colleagues to vote for both amendments.

Mr. SARBANES. Mr. President, in just a few minutes, at 4:45, we will move to the first of two votes. The first vote will be on the Daschle amendment, and the second vote on the Lott amendment. I urge my colleagues to support both amendments.

At the conclusion of those votes, we will go to Senator Edwards, who has been waiting patiently, to call up an amendment. Then we have sequenced behind Senator Edwards, for purposes of calling up amendments, Senator Gramm, and Senator Levin has an amendment involving the powers of the SEC, and then back to Senator Gramm. That is the procedure we have managed to put into place so far while continuing to work to try to compile a list of amendments and to do some sequencing.

We urge our colleagues to inform us—I am not urging to add amendments, but just informing colleagues of the process so they can be on the alert.

Very shortly we will begin the first of two rollcall votes. Both of these are amendments which strengthen the penalties. Many are related to the Leahy amendment which we adopted earlier today, and in a sense deal primarily with the subject matter that was in the Leahy amendment.

I urge my colleagues to be supportive of both amendments.

Mr. GRAMM. I yield back any time I may have.

Mr. SARBANES. I yield back the time.

The PRESIDING OFFICER (Mr. MILLER). The question is on agreeing to amendment No. 4186 as further modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID, I announce that the Senator from New Jersey (Mr. Corzine) is necessarily absent. I further announce that, if present and voting, the Senator from New Jersey (Mr. Corzine) would vote "aye."

Mr. NICKLES, I announce that the Senator from North Carolina (Mr. Helms), the Senator from Ohio (Mr. Voinovich), and the Senator from Idaho (Mr. Crapo) are necessarily absent. I further announce that, if present and voting, the Senator from North Carolina (Mr. Helms), would vote "aye."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 170 Leg.]

Yeas—96: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Craig, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry,

Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Warner, Wellstone, Wyden

Not Voting—4: Corzine, Crapo, Helms, Voinovich

The amendment (No. 4186), as further modified, was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 4188

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to Lott amendment No. 4188.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), the Senator from Ohio (Mr. Voinovich), and the Senator from Idaho (Mr. Crapo) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "yea."

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 171 Leg.]

Yeas—97: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Craig, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Warner, Wellstone, Wyden

Not Voting—3: Crapo, Helms, Voinovich

The amendment (No. 4188) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. SARBANES. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina is recognized.

AMENDMENT NO. 4187

Mr. EDWARDS. Mr. President, I wish to say a few words about an amendment I intend to offer along with Senators Enzi and Corzine. This amendment addresses an important player in the problem we

have had with corporate misconduct in this country. It is a player with which I have a lot of personal experience. That player is a lawyer.

As most people know, I practiced law for 20 years and spent a lot of time representing kids and families against very powerful interests. I think I have a reasonably good understanding of what responsibilities we as lawyers have to the people we represent. While those are the kinds of folks that I mostly represented, other lawyers have different kinds of clients. Some lawyers represent corporations rather than individuals. The lawyers who represent corporations have the same kind of responsibility, but it is to a different entity and a different group of people. They have a responsibility, though, to represent that corporation, their client, zealously, the same way I had the responsibility to represent kids and families.

One of the problems we have seen occurring with this sort of crisis in corporate misconduct is that some lawyers have forgotten their responsibility. We have heard a great deal about managers and accountants, which Senator Enzi is familiar with, and scandals such as Enron and WorldCom. Managers and accountants are the focus of Senator Sarbanes' bill, and they are critical to us doing what needs to be done to correct this problem and restore the public confidence.

The truth is that executives and accountants do not work alone. Anybody who works in corporate America knows that wherever you see corporate executives and accountants working, lawyers are virtually always there looking over their shoulder. If executives and/or accountants are breaking the law, you can be sure that part of the problem is that the lawyers who are there and involved are not doing their jobs.

For the sake of investors and regular employees, ordinary shareholders, we have to make sure that not only the executives and the accountants do what they are responsible for doing, but also that the lawyers do what they are responsible for doing as members of the bar and as citizens of the country.

Let me be a little more specific about what this amendment does and what the responsibility of a lawyer is and should be. If you are a lawyer for a corporation, your client is the corporation and you work for the corporation and you work for the shareholders, the investors in that corporation; that is to whom you owe your responsibility and loyalty. And you have a responsibility to zealously advocate for the shareholders and investors in that corporation.

What we have seen some lawyers do, unfortunately, is different. We have seen corporate lawyers sometimes forget who their client is. What happens is their day-to-day conduct is with the CEO or the chief financial officer because those are the individuals responsible for hiring them. So as a result, that is with whom they have a relationship. When they go to lunch with their client, the corporation, they are usually going to lunch with the CEO or the chief financial officer. When they get phone calls, they are usually returning calls to the CEO or the chief financial officer. The problem is that the CEO and the chief financial officer are not the client. Their responsibility and the client they have to advocate for—and

which they have an ethical responsibility to advocate for—is, in fact, the corporation, not the CEO or the chief financial officer.

One of the most critical responsibilities that those lawyers have is, when they see something occurring or about to occur that violates the law, breaks the law, they must act as an advocate for the shareholders, for the company itself, for the investors. They are there and they can see what is happening. They know the law and their responsibility is to do something about it if they see the law being broken or about to be broken.

This amendment is about making sure those lawyers, in addition to the accountants and executives in the company, don't violate the law and, in fact, more importantly, ensure that the law is being followed. For some time, the SEC actually tried to do that in the late 1970s and early 1980s. They brought legal actions to enforce this basic responsibility of lawyers—the responsibility to take steps to make sure corporate managers didn't break the law and harm shareholders in the process. If you find out that the managers are breaking the law, you must tell them to stop. If they won't stop, you go to the board of directors, which represents the shareholders, and tell them what is going on. If they won't act responsibly and in compliance with the law, then you go to the board and say something has to be done; there is a violation of the law occurring. It is basically going up the ladder, up the chain of command.

For years, the SEC recognized the principle that lawyers had a legal responsibility to go up the ladder if they saw wrongdoing occurring. But then they stopped. One of the reasons they stopped is because there were a lot of protests coming from the organized bar. With Enron and WorldCom, and all the other corporate misconduct we have seen, it is again clear that corporate lawyers should not be left to regulate themselves no more than accountants should be left to regulate themselves. There has been a lot of debate, rhetoric, and discussion—rightfully so—about the necessity about not "letting the fox guard the chicken coop." The same is true with lawyers. This has become clear through various acts of misconduct. The lawyers have involvement and responsibility, and they also cannot be left to regulate themselves.

In January, a bipartisan group of the top securities lawyers and legal ethics experts in the country wrote a letter to Harvey Pitt telling him it was time for the SEC to enforce the up-the-ladder principle, as in the past. Mr. Pitt's top lawyer said: We are not going to do anything. If Congress wants something done, Congress should act. Then I wrote a letter to Mr. Pitt in essence saying: We are ready to act here. Will you help us in crafting legislation and working out this problem?

That was 3 weeks ago. As of now, I have not yet received a response.

The time has come for Congress to act. This amendment acts in a very simple way. It basically instructs the SEC to start doing exactly what they were doing 20 years ago, to start enforcing this up-the-ladder principle.

This is what the amendment says specifically: First, the SEC shall establish rules to protect investors from unprofessional conduct by lawyers, conduct that violates the legal standards of the profession.

Second, the SEC shall make one rule in particular, and it is a simple rule with two parts. No. 1, a lawyer with evidence of a material violation of the law has to report that evidence either to the chief legal counsel or the chief executive officer of the company. No. 2, if the person to whom that lawyer reports doesn't respond appropriately by remedying the violation, by doing something that makes sure it is cured, that lawyer has an obligation to go to the audit committee or to the board. It is that simple. You report the violation. If the violation isn't addressed properly, then you go to the board.

Three important details about this amendment address some of the concerns that I have heard voiced. First, the way we have drafted the bill, the duty to report applies only to evidence of a material violation of the law. That means no reporting is required for piddling violations or violations that don't amount to anything. The obligation to report is triggered only by violations that are material—violations that a reasonable investor would want to know about. So we have been very careful there.

Second, when the evidence is reported within the company, we have not specified how a CEO or a general counsel should act to rectify the violation. That is because the truth is that the appropriate response to cure the problem will vary dramatically, depending on the circumstances. If the CEO can do a short investigation, for example, and figure out that no violation occurred, then the obligation stops there. But if there is a serious violation of the law, the appropriate response is clear: The CEO has to act promptly to remedy the violation. If he doesn't, the lawyer has to go to the board. It is that simple.

One final point. Nothing in this bill gives anybody a right to file a private lawsuit against anybody. The only people who can enforce this amendment are the people at the SEC.

They will enforce this amendment not on behalf of any private party, but in the name of the American people. This is about forcing the SEC to do its job and protect the American people.

Mr. President, I call up amendment No. 4187 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. Edwards], for himself, Mr. Enzi, and Mr. Corzine, proposes an amendment numbered 4187.

Mr. EDWARDS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To address rules of professional responsibility for attorneys)

On page 108, line 15, insert before the end quotation marks the following:

"(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of law by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report

the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

Mr. EDWARDS. I yield the floor.

Mr. GRAMM addressed the Chair.

Mr. SARBANES. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 4200 TO AMENDMENT NO. 4187

(Purpose: To modify attorney practices relating to clients, and for other purposes)

Mr. GRAMM. Mr. President, on behalf of Senator McConnell, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. Gramm], for Mr. McConnell, proposes an amendment numbered 4200 to amendment No. 4187.

Mr. GRAMM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. GRAMM. Mr. President, I am not going to talk about the amendment. Senator McConnell was concerned—he has an appointment tonight and he wanted to be recognized, so I offered the amendment for him. I wish to say a few words before I yield, giving him an opportunity to speak on behalf of the second-degree amendment.

I wish to print in the RECORD the lead editorial from today's Wall Street Journal. I would like to read the first paragraph. I want to make it clear, I am not talking about this amendment, I am just talking about the climate we are in. This is the lead editorial in today's Wall Street Journal:

As if investors weren't frightened enough, the politicians are now offering to help. That was worth more than 180 points off the Dow yesterday, but then stock prices aren't the point. Everything you're hearing now from Washington is aimed at winning the November elections, not calming financial markets.

This is an excellent editorial. One can agree with it or not agree with it. The point I want to make is the following: There is a wonderful line in a very famous economics book, "The Wealth of Nations," where Adam Smith is talking about government and talking about problems. A line in "The Wealth of Nations" goes something like: The economy is powerful and it overcomes not only the illness but the absurd prescription of the doctor that comes from the Government.

I believe we have now put together the makings of a good bill. We still have differences of opinion. We still have differences not on whether we should set up a board, not on how strong it should be. We agree on those issues. We have differences about how independent the SEC should be. We have differences as to whether that board ought to set audit standards and independent standards or whether we ought to do it by law.

As we go through the process in the next 2 days, if the some 30 amendments that people on my side of the aisle are proposing to

offer is any index, and as someone once said—and I am sorry I cannot remember his name—I have only seen the heart of a good man, not necessarily the heart of an evil man. I have just seen these amendments.

I am concerned that people who are looking at investing are going to say: My God, it is one thing that my stock has been battered because there were people who did things that were wrong, there were people who did things that were illegal, but now I am going to be battered by one-upmanship efforts to show that Congress is really tough, that Congress is tougher than the President, the President is tougher than the Congress, that Republicans are tougher than Democrats, or Democrats are tougher than Republicans.

I would just like to say, not that anybody is going to be calmed by what I say, but I would like to say, in the end, I think we will end up with a fairly responsible bill, and I hope people who are thinking about investing money will take into account that this, too, will pass; that this summer will pass; that after all the charges are made and the one-upmanship has occurred, in the end, normally this process has worked pretty well for over 200 years, and my guess is it will work well again and we will end up in a give-and-take in conference, with the White House involved, measuring each amendment in terms of what we think will work and what we think probably hurts more than it helps—the absurd prescription of the doctor about which Adam Smith talked.

If we do go too far in one area or we do not go far enough in another, there is going to be another Congress next year and the year after and for every year from now until the end of the world, I hope.

Just reading this article set me thinking about it. There are probably people trying to decide this afternoon what they are going to do tomorrow on Wall Street. We have this bill passed in the House where, if you are domiciled outside the United States and move your domicile, you cannot get Government contracts. This is the era of where, if you want to slap an accountant around, it is not going to do a lot of harm. It is not fair, it is not right, I am not for it, and I am not going to do it, but if you want to slap business around, this is a wonderful time to do it.

The problem is the market is going to open in the morning and people are going to either buy or sell or they are going to do both.

I ask unanimous consent to print this lead editorial from the Wall Street Journal in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal]

REVIEW & OUTLOOK: THE NOVEMBER MARKETS

"Congress must now act to restore public confidence."—Senator Carl Levin (D., Mich.)

As if investors weren't frightened enough, the politicians are now offering to help. That was worth 180 more points off the Dow yesterday, but then stock prices aren't the point. Everything you're hearing now from Washington is aimed at winning the November elections, not calming financial markets.

That includes President Bush's much-touted Wall Street speech yesterday on "corporate responsibility." His stern words for CEO wrongdoers were perfectly apt, and some of his proposals might even help. But coming so long after the Enron scandal

first broke, and amid election season, the speech was widely and accurately described as an exercise in defensive politics.

Democrats immediately panned it as inadequate, but they'd have said that if Mr. Bush had proposed public hangings. Their goal is to associate Republicans with corporate "greed," to knock Mr. Bush's approval rating from its war-time pedestal and develop a campaign issue.

You can judge their sincerity by the sop to trial lawyers that has suddenly appeared in the "reform" queue. For months Maryland Democrat Paul Sarbanes has worked to form a bipartisan coalition for accounting reform. But now Senate Democrats are also demanding that Mr. Bush sign onto expanding the time available for plaintiff plutocrat Bill Lerach to file shareholder suits. In other words, what they're really after is a Bush veto, which they will then run against.

It's not as if Mr. Bush is letting business off the moral hook. He's creating a new Justice Department task force on corporate fraud, which as these things go will find someone to indict. He's also painted a bull's-eye on CEOs, who will now be personally and criminally liable (and face stiff penalties) for their companies' financial results.

We only hope Justice keeps in mind the requirement of mens rea, or criminal intent, when it's CEO hunting. This legal principle got trampled in the rush to convict Arthur Andersen. If otherwise honest CEOs can be indicted merely for putting their names to a statement that turns out to be false, good luck finding competent executives.

The brighter CEOs have also been busy cleaning up their own act. They understand something that politicians won't admit, which is that only business is truly capable of restoring confidence in business. The New York Stock Exchange and Goldman Sachs chief Hank Paulson have proposed more CEO supervision by independent directors, among other reforms.

Just as significant, major pension funds and large investors have begun to scrutinize stock options and other forms of executive compensation. This sort of due diligence too often went missing in the "decade of greed," as liberals now like to call the 1990s. (Or are we confusing our decades?)

Mr. Bush put it well yesterday: "I challenge every CEO in America to describe in the company's annual report, prominently and in plain English, details of his or her compensation package, including salary and bonus and benefits. And the CEO, in that report, should also explain why his or her compensation package is in the best interests of the company he serves." The point isn't that there is a moral taint to high pay but that it has to be justified in shareholders value.

The one place we've thought regulatory change might help is audit reform. Clearly the culture of the accounting trade went awry in the 1990s, and not only at Arthur Andersen. We favored Paul Volcker's plan, which would have restored some internal accounting-firm discipline and reduced conflicts of interest. But the accounting lobby resisted and now finds itself fending off much more intrusive regulation in Congress. Serves them right.

As a political matter, Republicans are also paying for protecting the accountants. Bush SEC Chairman Harvey Pitt, who once worked for the Big Five, is now being urged to resign by the likes of Al Gore, Tom Daschle and John McCain. As these columns noted long before these politicians wet their finger to the wind, Mr. Pitt's temptation now will be to appease these critics by cracking down too hard on too many, in a way that further roils financial markets. A regulator with more credibility usually has to regulate less.

The investing public, fortunately, seems to understand this. While rightly angry about WorldCom and Enron, the public hasn't panicked even after three years of stock-market losses. Americans know that even scarier than a bear market in stocks is a bull market for politicians.

Mr. GRAMM. Mr. President, I ask my colleagues to read the editorial and pray over it. As I say, there are some things in it one may like, some one may not like; one may not like any of it, or one may like all of it.

In the next couple of days, we are going to have a lot of proposals that are going to be frightening to investors. I wanted to take this opportunity tonight to tell them that—I know my dear colleague who is sitting in the chair as a Presiding Officer remembers the old hymn, "This is My Father's World." Remember that hymn? It talks about all these things that are happening, all these bad things that

happen, but in the end it is going to be right. I think the Lord is going to count on us to right it. I hope it is in good hands.

In any case, I wanted to say that as we hear all these ideas brought up, if you are thinking about investing money tomorrow or next week or next year, do not be frightened. I think this issue is going to move back toward a middle course, and if we go too far—and I hope we will not, and I am dedicated to not doing more harm than good—then we will fix it, and if in some areas we do not go far enough, we can come back and fix it, too.

As I said, I offered the second-degree amendment for Senator McConnell who has an appointment and wanted to get his amendment in. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I say to my friend from Texas, I have enjoyed his wisdom over the last 18 years. I am going to save my remarks about how I feel about his departure until later in the year. We have just heard another example of the extraordinary wisdom of the senior Senator from Texas from which I have benefited for 18 years. I wish to tell him again how much his service has meant not only to his State but to our Nation.

I say to my friends from Wyoming and North Carolina, they will be relieved to know I do not intend to make my speech on the second-degree amendment. This is an amendment about which I am sure the junior Senator from South Carolina is going to be particularly enthusiastic. I say that with tongue in cheek. I will briefly describe what it is.

This is an amendment to provide a client's bill of rights for clients with Federal claims or who are in Federal court. Fundamentally, what this client's bill of rights would provide is an opportunity for an orderly and systematic notice from their lawyers of the fee arrangements to which they are subjecting themselves; in addition to that, a bereavement rule which would prevent the solicitation of business within 45 days of the occurrence of the event. That is a brief summary of what my amendment is about. There will be ample time for everyone to take a look at the amendment over the evening. It does not in any way detract from the underlying Edwards-Enzi amendment, which I support and commend the authors for offering. I think it is right on the mark. I would like to see these principles expanded to a larger class of clients so they, too, can receive adequate protection.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that following the previous sequence already in place, the amendments listed in this agreement be the next six amendments in the sequence, in the order listed: Carnahan amendment regarding electronic filing; McCain amendment regarding accounting treatment/stock options; Dorgan amendment regarding bankruptcy/disgorgement; Enzi amendment regarding materiality; Schumer amendment regarding restitution; and Murkowski amendment regarding the Ninth Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered.

Several Senators addressed the Chair.

Mr. REID. Mr. President, I would say to the Chair that I ask the Senator to yield to me for a unanimous consent request so the Senator from Illinois would have the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I want to make a comment about the second-degree amendment that is pending. I want to commend my colleague, the Senator from Kentucky.

Last night, at the close of the session, there was an amendment offered by the Senator from Kentucky and the Senator from Texas. Now remember, this bill is about corporate misconduct. This is about corporate corruption. Last night, they decided we ought to expand the jurisdiction and scope of this debate to include reforming labor unions.

I have followed Enron, WorldCom, and others very closely and do not recall ever hearing anybody say the root cause of the problem of these corporations was labor unions. Thank goodness the Senate rejected that notion.

The Senator from Kentucky comes back tonight and says, no, it is not just labor unions, it is the fees paid to lawyers; that is the problem. When you are dealing with corporate corruption, it is the fees paid to lawyers, contingency fee contracts, and class actions.

I was stopped cold when I heard this amendment being described to try to understand what this has to do with making certain that criminal misconduct by corporate officers will result in time in jail. I do not get the connection. Perhaps the Senator from Kentucky can help me understand this. How does the issue of attorney's fees relate to corporate misconduct and corporate corruption?

I am sorry he cannot join us in this debate to respond, but I say to my colleagues I am beginning to get the distinct impression that the other side of the aisle is trying to change the subject on us. I do not think they want to talk about wrongdoing in corporate boardrooms and what we can do to restore confidence.

Yesterday, the President used the bully pulpit and turned the bears loose on Wall Street. Today, we had another dip in the stock market. We had better get honest. We had better get real. We had better make some real changes in the law to bring honesty in transactions with major businesses if we want to restore America's confidence in business dealings and bring people back to the stock market and get this economy back on track and give people a chance to save for their retirement. That is what this is all about.

Somehow or another the other side of the aisle wants us to veer off now and talk about attorney's fees. I do not get the connection, and I urge my colleagues to take a close look at this long amendment and try to join me in divining what they are trying to achieve other than to perhaps change the subject.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I do rise in support of the Edwards-Enzi-Corzine amendment. I am disappointed there has been a second-degree amendment to this, on which amendment we are working. It does not deal with the same topic. It does not deal with the same bill. It is going off in a different direction. If we keep having second-degree amendments throughout that go off in other direc-

tions, we are not going to get this bill finished and through the process. So it would be my hope it would be withdrawn.

I will concentrate my efforts on the amendment I have worked on with Senator Edwards, Senator Corzine, and others. This amendment is designed to assure that attorneys are responsible for fully informing their corporate client of evidence of material violations of Federal securities law. That is what we are talking about through the whole accounting reform.

Over the past few months, Congress and the public have concentrated on the role of accountants and auditors involved in Enron, WorldCom, Global Crossing, and others. We have held hearings and drafted legislation intended to restore a high level of ethical behavior to corporate America and the accounting industry. This breach in ethical behavior led to the problems these companies are now experiencing. I have to say through all of those hearings, as an accountant, I felt the profession was very picked on, and the profession deserved to be picked on—not everybody in the profession. Again, it is that one-half of 1 percent or one-tenth of 1 percent who are fouling up everything for everybody. It happens in a lot of different professions.

As we beat up on accountants a little bit, one of the thoughts that occurred to me was that probably in almost every transaction there was a lawyer who drew up the documents involved in that procedure. I know as to the companies we looked at, that was the case. It seemed only right there ought to be some kind of an ethical standard put in place for the attorneys as well. All of the people who are involved should be looking at a new way of doing business.

As an accountant, I have been deeply disturbed by the action taken by some in my profession, and as a result I have taken a more personal interest than others might in drafting legislation which will ensure that accountants act professionally and responsibly, and which will protect the interests of corporate shareholders.

Following hearings on this matter, it has become clear that the role of attorneys who counseled these corporations and their accountants must be scrutinized as well. Just like accountants, these lawyers are expected to represent the corporation in the best interests of the shareholders. In doing so, these attorneys are hired to aid the corporation and its accountants in adhering to Federal securities law.

When their counsel and advice is sought, attorneys should have an explicit, not just an implied, duty to advise the primary officer and then, if necessary, the auditing committee or the board of directors of any serious legal violation of the law by a corporate agent. Currently, there is no explicit mandate requiring this standard of conduct. It is clearly in the best interest of their client to disclose this kind of information to the board, rather than just upper management.

Maybe it could be called the “smell test.” If something smells wrong, somebody who can do something to fix it ought to be told.

It is important to understand the corporate attorney’s client is the whole corporation and its shareholders, and not just the CEOs or some of the executives, accountants, or auditors. As a result, their ultimate duty of representation is not to the people to whom

they normally report but to the shareholders through the board of directors.

This amendment would require the Securities and Exchange Commission to enact rules within 180 days to set forth minimum standards of professional conduct and responsibility for attorneys appearing and practicing before the Commission; not all attorneys, just attorneys appearing and practicing before the Commission; that is, those who are dealing with documents that deal with companies listed by the Securities and Exchange Commission.

This amendment instructs the Commission to establish rules that require an attorney, with evidence of material legal violation by the corporation or its agent, to notify the chief legal counsel or the chief executive officer of such evidence and the appropriate response to correct it. If these officers do not promptly take action in response, the Commission is instructed to establish a rule that the attorney then has a duty to take further appropriate action, including notifying the audit committee of the board of directors or the board of directors themselves, of such evidence and the actions of the attorney and others regarding this evidence. It is all within the corporation.

This amendment is simple. It requires the attorney to contact specific persons who are part of the management hierarchy and explain the problem. If that fails to correct the problem, the attorney must contact the audit committee or the board of directors.

I am usually in the camp that believes States should regulate professionals within their jurisdiction. However, in this case, the State bars as a whole have failed. They have provided no specific ethical rule of conduct to remedy this kind of situation. Even if they do have a general rule that applies, it often goes unenforced. Most States also do not have the ability to investigate attorney violations involved with the complex circumstances of audit procedures within giant corporations.

Similarly, the American Bar Association's Model Rules of Professional Responsibility do not have mandatory rules for professional conduct for corporate practitioners which require them to take specific action. The ABA merely has a general rule that an attorney must represent the best interests of an organization and suggests a number of ways an attorney could respond, including reporting illegal conduct to a responsible constituent of the organization, such as the board of directors. But this does not mandate action.

In response to Enron and the current environment concerning corporate integrity, on March 27 of this year the ABA did form a task force on corporate responsibility. But how many task forces have been formed and accomplished nothing? Task forces are often used to delay implementation of necessary changes. When task forces are used, we all know it takes years to set up the rules. When they are established, States may not actively enforce them or even have the means to enforce them.

In any event, it is my understanding that the ABA's task force's preliminary recommendations are for the attorney to report law violations through a chain or ladder of the corporation. That is what, in fact, this amendment does, first through the legal counsel or CEO and then to the audit committee or the board of directors.

While I almost always advocate a State solution, in this instance I must advocate a Federal solution. In the past, Congress has authorized a Federal commission to regulate the conduct of attorneys through promulgation of rules on attorneys practicing before them. For example, 31 U.S.C. section 330 provides the Treasury Department authority to regulate the practice of attorneys appearing before the Internal Revenue Service. Accordingly, the IRS has promulgated rules on the conduct of attorneys.

Under 31 CFR, part 10.21 of the IRS regulations, each attorney who knows the client has not complied with the revenue laws or who has made an error or omission on any return or document required by the IRS shall advise the client promptly of the fact of such noncompliance, error, or omission. The amendment I am supporting will give the SEC authority to promulgate a rule similar to the IRS rule.

In the past, the SEC has tried to impose ethical conduct on attorneys. SEC rule 2(e), previously 102(e), authorizes the Commission to disbar or suspend from practice before it a lawyer or other professional who violates the securities law, assists in someone else's violation, or otherwise engages in unprofessional conduct.

Through this process, the SEC previously instituted proceedings under rule 102(3) to enforce the ethical standards for the practice of Federal securities law. But it has stopped bringing these types of actions. This amendment will get the SEC back on track and make attorneys stand up and pay attention if they have evidence a corporate agent has committed a material legal violation.

In the wake of Enron, over forty professors with expertise in Federal securities and ethics law, have written to SEC Chairman Harvey Pitt asking for some form of regulation over the practice and conduct of attorneys involved in Federal securities law.

In their letter, they state that if senior managers will not rectify a violation, lawyers who are responsible for the corporation's securities compliance work, should be required to report to the board of directors.

As they point out, such a disclosure obligation is still less onerous than that imposed on accountants under section 10A of the 1934 Securities Exchange Act, which requires an auditor to report, both to the client's directors and simultaneously to the SEC, and illegal act if management fails to take remedial action.

The amendment I am supporting would not require the attorneys to report violations to the SEC, only to corporate legal counsel or the CEO, and ultimately, to the board of directors.

Some argue that the amendment will cause a breach of client/attorney privilege, which is ludicrous. The attorney owes a duty to its client which is the corporation and the shareholders. By reporting a legal violation to management and then the board of directors, no breach of the privilege occurs, because it is all internal—within the corporation and not to an outside party, such as the SEC.

This amendment also does not empower the SEC to cause attorneys to breach their attorney/client privilege. Instead, as is the case now, attorneys and clients can assert this privilege in court.

In addition, this amendment creates a duty of professional conduct and does not create a right of action by third parties. The

Fourth Circuit has made such a ruling concerning the code of conduct applied by the IRS Rules.

The SEC has already found that attorneys who fail to take steps to prevent their clients from violating Federal securities law are guilty of aiding and abetting. This amendment will put attorneys on the right course. By reporting violations to the board of directors, they can avoid being found guilty of aiding and abetting their client.

Just as I am concerned about the conduct of accountants because that is my profession, I would think member attorneys would be as concerned about the conduct of the legal profession. To ignore the role attorneys played in Enron, WorldCom and Global Crossing is a disservice to their profession.

I hope you will join me in ensuring that attorneys are required to conduct themselves ethically and in the best interests of their client when they see evidence of a material legal violation. They should be expressly required to report that type of activity to upper managers, and ultimately, to the board of directors who represent the shareholders.

After Enron, it is clear we need some hard and fast rules, and not just an arcane honor code rarely adhered to, so the necessary measure of client duty is placed into the hearts and minds of the legal profession. Again, I am disappointed there is a second-degree amendment. This is an important amendment and something that I thought would be cleared by both sides. We will deal with the rest of the process.

I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Wyoming yields the floor.

The Senator from New Jersey.

Mr. CORZINE. Mr. President, first, I am proud to have worked with Senator Edwards and Senator Enzi on this amendment on lawyer responsibility in corporate practice. It is an exceptional piece of additional effort in dealing with corporate fraud, corporate crime, and corporate abuse. I am very happy to have participated with him, and I particularly compliment Senator Edwards on bringing this important issue to the attention of the Senate and for making sure that we propose this strong amendment, to ensure corporate lawyers' ethical responsibilities.

I, too, with the Senator from Wyoming, am disappointed. We are mixing apples and oranges when we are talking about lawyer's fees. This is dealing with corporate actions of lawyers. I don't understand why we are trying to move to a completely different subject when what we are trying to deal with is corporate responsibility. Lawyers play a role in that as much as accountants and management.

Again, I thank Senator Enzi for his cooperation and leadership, not only on this effort but with regard to the core bill, which is going to make a big difference in the marketplace. People talk about weakness in the market and are fearful of what we do in Congress, but they are really fearful of what we will not do or what we might do in addressing some of the quite obvious needed reforms.

We have talked a lot in the wake of Enron and WorldCom about the responsibility of accountants and corporate managers. Rightly so, as we have seen far too much bending of the rules, breaking of the rules in pursuit of profit, pursuit of personal gain. In their wake, shareholders, employees, and frankly the whole economy, has suffered from the selfishness that we have seen demonstrated by the actions of many—the criminal actions, in some instances.

It is not insignificant that even before this week, before there was so much focus on this issue, this year there had been roughly $2 trillion worth of damage, value lost in the stock market, which is reflective of the discomfort that investors across the globe, as well as here at home, feel about where we stand.

As a former corporate leader, I tell you I am disgusted with many of the actions I have seen taken by some corporate managers when they betrayed shareholders' trust, employees' trust, and the public confidence in general. I think they have basically betrayed our whole Nation's economy. That is why I have been pleased to work on this critical legislation that Senator Sarbanes has proposed regarding the accounting industry's corporate responsibility.

But I do not think that is enough. I think, as Senator Edwards said when he brought this to our attention, executives and accountants do not work alone. In fact, in our corporate world today—and I can verify this by my own experiences—executives and accountants work day to day with lawyers. They give them advice on almost each and every transaction. That means when executives and accountants have been engaged in wrongdoing, there have been some other folks at the scene of the crime—and generally they are lawyers.

This is not a new issue. The SEC had an unambiguous view about this more than 10, 15 years ago. More than 10 years ago Judge Stanley Sporkin, while commenting on the criminal actions of Charles Keating, noted that Keating had:

> . . . surrounded himself with literally scores of accountants and lawyers to make sure all the transactions were legal.

In a now famous refrain, Sporkin lamented:

> Where were these professionals . . . when these clearly improper transactions were being consummated? . . . Where, also, were the outside accountants and attorneys when these transactions were being effectuated?"

That sounds a little familiar in the current circumstance. The bottom line is this. Lawyers can and should play an important role in preventing and addressing corporate fraud. Our amendment seeks to ensure that. It seeks to go back to the old way: When lawyers know of illegal actions by a corporate agent, they should be required to report the violation to the corporation.

Let me be clear. The same as I feel about most accountants and most business leaders, the vast majority of lawyers discharge their duties with integrity and in an ethical manner. This is not an effort to blame corporate lawyers. But we cannot overlook the role corporate lawyers, the lowest common denominator, can play in addressing abuses and ensuring that our markets have integrity. We need to clarify that corporate lawyers have a duty to the shareholders, not just to the management that hired them.

That is why Senator Edwards, Senator Enzi, and I have crafted an amendment that will clarify that lawyers who know of wrongdoing by a corporation must report that wrongdoing to the client so it can be corrected. The client is more than just the person who hired them. The lawyer's client is the corporation's shareholders, not the manager. As we have seen far too often this year, when management is engaged in fraud it harms the shareholders. That is why we need to ensure that lawyers who know of illegal acts report those acts to the board of directors which represent those shareholders. Our amendment would require the SEC to establish rules in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission. Those rules would include—shall include a requirement that lawyers who have evidence of a violation of law would be required to go up the ladder of corporate management and report the violation.

It is a simple principle—very much common sense. If a manager doesn't respond appropriately, including remedying any violation, the lawyer would then be required to report the violation to the board of directors which represents the shareholders.

We should recognize that in some instances where there may be evidence of a violation, it may become apparent after a more complete investigation that there is not an actual violation. But when lawyers are aware of a potential violation, they do have a duty to investigate. And if they determine there is a material violation of law—not some small violation, some insignificant rule—that violation should be remedied by the corporation. If it is not remedied, it is the duty of the lawyer, under our language, to report it to the board.

I am pleased that Senator Edwards and Senator Enzi and I have been able to craft an amendment that will firmly establish the ethical duty of corporate lawyers to report wrongdoing to their client, including, if necessary, to the board of directors that represents a company's shareholders.

Addressing the role of corporate lawyers is just as important a step as it is with accountants and with corporate officers. If we want to truly address this breakdown in corporate responsibility, it is a critical piece of the puzzle that cannot be overlooked. I urge my colleagues to support this sensible amendment.

Once again I say I am disappointed with the McConnell amendment. I suggest we move to table that, in light of its irrelevance with respect to the underlying matter.

I will withdraw that motion, and I suggest the absence of a quorum.

Mr. REID. Will the Senator withhold?

Mr. SARBANES. Does the Senator yield the floor?

The PRESIDING OFFICER. Does the Senator withhold suggesting the absence of a quorum?

Mr. CORZINE. Yes. I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 4206

Mr. MILLER. Mr. President, I ask unanimous consent the pending amendments be laid aside so I may offer an amendment, and that

there be a time limitation of 2 minutes on my amendment, with no amendments in order to my amendment. This amendment has been agreed to by both managers.

Mr. REID. Reserving the right to object, and following the disposition of this that we will return to the Edwards amendment?

The PRESIDING OFFICER. That is the understanding of the Chair. Is there objection? Without objection, it is so ordered.

Mr. MILLER. I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. Miller) proposes an amendment numbered 4206.

Mr. MILLER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of the Senate that the chief executive officer of a corporation should sign the corporation's income tax returns)

At the end add the following new title:

TITLE VIII—CORPORATE TAX RETURNS

SEC. 801. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

Mr. MILLER. Mr. President, this amendment is only three lines long. Let me read them to the Senate:

It is the sense of the Senate that the Federal income tax return of a corporation shall be signed by the chief executive officer of such corporation.

Believe it or not, that is not in the law right now, and it should be. The average wage earner on his 1040 form has to sign it. We require it of him. That is what we should require of the CEO of a corporation, just treat them the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland, Senator Sarbanes.

Mr. SARBANES. I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GRAMM. Mr. President, I withdraw the request. I don't have any problem. It was a confusion of which amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 4206) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I announce that there will be no more rollcall votes tonight. I hope Senators will come to the floor and continue to participate in the debate. But for the interest of Senators and schedules, we will have no additional rollcall votes tonight.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, while we are all waiting for further business, I will take just a moment to speak to the amendment that has been offered by the very able Senator from North Carolina. In fact, I would like to put a couple of inquiries to the Senator, if I might.

It is my understanding that this amendment, which places responsibility upon the lawyer for the corporation to report up the ladder, only involves going up within the corporate structure. He doesn't go outside of the corporate structure. So the lawyer would first go to the chief legal officer, or the chief executive officer, and if he didn't get an appropriate response, he would go to the board of directors. Is that correct?

Mr. EDWARDS. Mr. President, my response to the question is the only obligation that this amendment creates is the obligation to report to the client, which begins with the chief legal officer, and, if that is unsuccessful, then to the board of the corporation. There is no obligation to report anything outside the client—the corporation.

Mr. SARBANES. I think that is an important point. I simply asked the question in order to stress the fact that that is the way this amendment works. This has been a very carefully worked out amendment. I engaged in an exchange with the distinguished Senator from North Carolina, and the Senator from Wyoming, Mr. Enzi, the cosponsors of this amendment. I know how careful they have been in trying to craft the amendment and in bringing it here. I think they have done an absolutely first-rate job in sort of focusing the amendment, considering questions that were raised from one source or another, and adjusting it in order to meet them.

I think the amendment they have now put before us is an extremely well reasoned amendment, and it ought to command the support of the Members of this body.

I very deeply regret that Senator McConnell has added an amendment to the amendment. His amendment really doesn't address this amendment. It doesn't really address the subject matter of this legislation. It is a total diversion. Of course, I presume it will complicate our ability to try to move ahead as we consider amendments. It obviously complicates the consideration of the Edwards-Enzi amendment which is now pending.

Furthermore, I understand that under this amendment it can only be enforced by the SEC through an administrative proceeding. Is that correct?

Mr. EDWARDS. The answer is yes. The only way to enforce this legal requirement is through an administrative process.

Mr. SARBANES. That was an effort, of course, to deal with the idea that somehow it might bring causes of action from outside, or somewhere else. So it is limited to the SEC. The SEC, as I understand it, had something like this in place in the past. Is that correct?

Mr. EDWARDS. The answer is yes. Years ago, the SEC had and enforced such a regulation, which they have not been doing for some time.

Mr. SARBANES. I further understand that a number of professors of securities regulations and professional ethics are, in fact, supportive of this proposal. I think at an earlier time they wrote to the SEC urging the SEC itself to put some provision such as this into place. Is that correct?

Mr. EDWARDS. The Senator is correct. There is a large group of distinguished securities lawyers and legal ethics lawyers who have written the SEC suggesting exactly what the Senator said—that it become part of the regulations and part of the law.

Mr. SARBANES. This amendment really, in effect, parallels or follows those recommendations—at least in substantial respect—as I understand it.

Mr. EDWARDS. That is correct.

Mr. SARBANES. Again, that letter which I have had the chance to review, and also the signatories to it—some 40 or so distinguished professors of securities regulations or professors of professional ethics at the law schools—is also a very carefully reasoned proposal. The one they submitted to the SEC is the one the Senator from North Carolina has tracked in his amendment.

I thank both Senator Edwards and Senator Enzi for their very careful work. And I very much hope at the appropriate time we will be able to adopt this amendment and include it in this legislation. I think it makes an important contribution.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent at this time that I be called upon to offer an amendment; that the amendment be debated tonight—it is the amendment on SEC enforcement—and that when the debate is completed tonight and when we recess until the morning, that when the morning arrives, we would then return immediately to the Edwards underlying amendment and the McConnell second-degree amendment thereto.

The reason I make this unanimous consent proposal tonight is that there are a lot of relevant amendments which are waiting in line, which are important amendments, which have a lot of support, I believe, on a bipartisan basis in this body that ought to be considered prior to cloture or else; because they may not be technically germane, they would be precluded if cloture is invoked.

I have a number of amendments on the list. I think we should move this train forward tonight, utilize the time this evening to move this process forward so as many of these amendments as pos-

sible can be considered before cloture. I make that unanimous consent proposal at this time.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. GRAMM. Mr. President, reserving the right to object, let me say that we have a lot of people who want to offer amendments. I have on my side some 30 amendments. We had better follow the regular order. Let me say that I would intend, once we have disposed of this unanimous consent request, to ask that all further amendments be germane to the bill and that at noon tomorrow we proceed to third reading. But I object to the unanimous consent request.

The PRESIDING OFFICER. Objection is heard.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that at 10:30 tomorrow morning, Thursday, July 11, the Senate resume consideration of S. 2673 and that the time until 12 noon be divided as follows: The first 45 minutes under the control of Senator Byrd; the remaining 45 minutes under the control of Senator McConnell or his designee; that at 12 noon Senator Enzi be recognized to make a motion to table the McConnell second-degree amendment No. 4200, with no intervening amendment in order prior to disposition of the McConnell amendment.

That is not part of this agreement. For the information of Senators, we would have an hour, beginning at 9:30, for morning business for both sides, equally divided.

Mr. LEVIN. Mr. President, reserving the right to object.

Mr. GRAMM. Mr. President, I think this is a perfectly reasonable unanimous consent request, and I do not object.

Mr. LEVIN. Reserving the right to object, Mr. President, I have two questions relative to this unanimous consent request. The first question is, Does this then mean we would move to the disposition of the Edwards amendment?

Mr. REID. Mr. President, that is my hope. One of the reasons we want to dispose of the second-degree amendment—Senator Enzi, who has worked with you and others on the underlying amendment, is going to move to table. We hope we can move to the Edwards amendment.

The Senator from Texas, Mr. Gramm, has told us he wants to study this tonight and he will give us word on it tomorrow. I think it has been debated quite sufficiently. It appears to me the Edwards amendment is reasonable. I think in the dialog he answered all the questions of the Senator from Texas. I have no problem if the Senator wants to spend the night looking it over more.

Mr. LEVIN. My second question under the reservation is this: This does not then change the order that has been previously listed for amendments under the earlier UC request; is that correct?

Mr. REID. That is correct. We have a number of amendments queued up. Senator Edwards has been here all day, for example. The Senator from Michigan has been here a long time today. We hope we can move through some of these tomorrow.

As the Senator knows, there is anticipation tonight that a cloture motion will be filed on this bill. The majority leader has told everyone that we have only 3 weeks remaining in this little session be-

fore the August recess. We would like to do prescription drugs. We are going to move, we hope, to the MILCON appropriations bill in the next day or so. We have homeland security we have to do. There is so much to do and a limited amount of time in which to do it.

Mr. LEVIN. Further reserving the right to object, Mr. President, I will simply add the following because there are relatively few hours between now and a vote on cloture, assuming that cloture motion is filed. I think we should fully utilize that time to consider relevant amendments. What my great fear is—which is being reinforced tonight—is that the time is going to be filled not by relevant amendments but in other ways which would preclude the consideration of relevant amendments in the event cloture is adopted. That is a major concern I have. I don't know if other people waiting in line with amendments that are relevant amendments have the same concern, but I hope and believe they do.

I hope it will be possible for relevant amendments to be considered, if not tonight, then tomorrow, and that the time be fully utilized; otherwise, it would simply preclude important relevant amendments that are waiting in line.

Mr. REID. Mr. President, the Senator also speaks for others. We have had, over the last several months, problems getting legislation up the way we used to do it here. It is difficult when we have obstacles that are brought up. It does not allow us to proceed in the normal fashion. I hope the Senator will allow the agreement to go forward.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Texas.

Mr. GRAMM. Madam President, I am told one of my colleagues is coming down to object to this unanimous consent request. I have to suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Madam President, the reservations of the Senator from Michigan have no impact on this unanimous consent request? That is a parliamentary inquiry. The reservations expressed by the Senator fromMichigan have no impact on the unanimous consent request as it is written?

The PRESIDING OFFICER. That is correct.

Mr. GRAMM. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Madam President, I appreciate very much the work of the managers of this bill. This is very important legislation. I was advised by the Chairman of the committee just a few minutes ago the stock market dropped again today almost 300 points. We need to do something to reestablish credibility and to reestablish the confidence of the American people in corporate America. This legislation goes a long way toward that end. I hope there will be co-

operation tomorrow so that some of these relevant amendments can be offered.

I hope everyone understands the importance of this legislation. I am confident they do. I appreciate the ability to work this out so we can at least move forward tomorrow to the extent we do in this unanimous consent agreement.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, let me just outline, if I may, where I see we are in the process. Tonight, a cloture motion is going to be filed. Tomorrow we are going to have a series of amendments. As everybody knows, when cloture is invoked, the relevant test is germaneness, not relevance, not significance, not the feeling of a Member that their amendment is important or more important than any other Member. The test is germaneness.

Anybody who has ever been involved in a situation where we move toward cloture understands that once we are on that track, unless amendments are relatively acceptable on a broad basis to all parties involved, knowing that the amendment is sheared off at the hour of cloture, that amendment in all probability—let me state it more precisely—that amendment is not going to be adopted.

We can do this in one of two ways, and either way works perfectly with me. We can either try for the nongermane amendments—if your amendment is germane, you are solid, you can offer it now, you can offer it later, and you are going to get a vote on it. But if your amendment is not germane, I suggest we try to get our staffs together and see if something can be worked out where if part of the amendment or all of the amendment or the amendment and something else is noncontroversial, it could be adopted.

At the end of the day, we will all be happier if we do that. If we spend all of tomorrow butting heads knowing what the final outcome is going to be, the net result is we are just going to have unhappiness and no good will come out of it.

I say to anyone who has a nongermane amendment, in the end, to have that amendment adopted it is going to have to be generally supported because, obviously, any Member is going to be able to prevent it from being voted on. It is going to get sheared off at cloture.

I have a list of amendments, most of which have absolutely nothing to do with this bill. I have amendments on bankruptcy. I have amendments on the Ninth Circuit Court of Appeals. I have amendments on pensions. I have amendments on tax policy. I have numerous amendments on stock options.

I submit to all these people who want to offer amendments that what we ought to do if we are going to try to get something done is to have them have their staff sit down with staff on both sides of the aisle and say: Is there anything in here that might be generally agreed to, and if that is the case, we could move in that direction.

Finally, let me say we have in place a unanimous consent agreement about how we are going to proceed tomorrow morning, and I ask the Democratic floor leader, if I can, given that we have a unanimous consent agreement in place for the morning, can we simply have the floor open for the purpose of debate only tonight

so that those of us who are going to be here all day tomorrow, as we were all day today, can go home?

Mr. REID. I say to my friend, there are some things we have to do, such as filing cloture, and if that situation of debate only is in effect, we could not do that.

Mr. GRAMM. With what now?

Mr. REID. If there is debate only, we could not file the cloture motion.

Mr. GRAMM. If you can just tell us, if we can have an agreement—the Senator can amend it. All I am saying is, if people want to stay and debate any pending amendment or talk about whatever they want to talk about, that is fine. It seems to me if we are through with all of our business except debate, we could let people who have debated enough go home.

Mr. REID. The leader has stated there will be no more rollcall votes tonight. I hope if one wants to talk about the bill, they will do that, but I do not think we need a UC to accomplish that.

Mr. GRAMM. If the Senator will yield, what about a unanimous consent request, except to file a cloture motion, that there will be debate only tonight? That way we do not have a problem of potentially someone asking unanimous consent for something.

Mr. REID. My personal feeling is I have no problem with that. I have to check with staff to make sure I am not missing anything, but I want to make sure the Senator from North Carolina is protected.

Mr. EDWARDS. Will the Senator from Texas yield, if he has the floor?

Mr. GRAMM. If I do I yield to him.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 4187, AS MODIFIED

Mr. EDWARDS. Madam President, I have a modification to my amendment at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 108, line 15, insert before the end quotation marks the following:

"(c) Rules of Professional Responsibility for Attorneys.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

Mr. EDWARDS. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 442, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002:

Jon Corzine, Deborah Stabenow, Paul Wellstone, Ron Wyden, Daniel Akaka, Barbara Boxer, Charles Schumer, Byron Dorgan, Harry Reid, Paul Sarbanes, Daniel Inouye, John Edwards, Barbara Mikulski, Thomas Carper, Jack Reed, Tim Johnson.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, before the Senator from Texas departs, I wish to add an observation to the comments he made before about how to proceed.

There are a number of amendments. The definition of germaneness, once cloture has been invoked, is very narrow. There are amendments that Members have which in the normal terminology would be regarded as germane and are certainly relevant. It seems to me an effort should be made to address those amendments as well as ones that are perceived to be germane in the very narrow sense.

There is another category of amendments that I am not very sympathetic to, and those are ones that have really nothing to do with this bill. The second-degree amendment offered by the Senator from Kentucky that is now pending, in my judgment, is an example of that. We probably ought to move very quickly to table those kinds of amendments when they come up so we have an opportunity for colleagues who have amendments that are really relevant to this legislation to bring them up and to have them considered.

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Yes.

Mr. GRAMM. I think we have a fairly broad consensus that is the direction in which we should go. The fact that we are getting ready to have cloture should not prevent us from adopting amendments where there is support and where there is a collective judgment that the amendment is relevant. The plain truth is that anyone knowing that cloture was coming could have held up the President's amendment which added criminal sanctions. Any Member of the Senate could have prevented that from being voted on knowing that it was nongermane, but nobody did that because there was a general base of support for it.

All I was saying was that every Member of the Senate knows the germaneness rule and everybody knows that, come whenever we invoke cloture, any amendment that is nongermane is going to fall. Then what is going to happen is, unless there is some consensus for the amendment, it is simply going to be delayed until it is cut off.

If what the Senator is saying is that if an amendment is relevant, if it would improve the bill, if it is not highly controversial, we ought to take it, I agree with that. Looking down my amend-

ment list, there are not a lot of such amendments, but the ones that are there, if people want to bring them up, I am not going to oppose an amendment simply because it is not germane.

Mr. SARBANES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I ask unanimous consent that the previously agreed to Daschle for Biden amendment, No. 4186, as modified, be inserted in the appropriate place in the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, THURSDAY, JULY 11, 2002, NUMBER 93, PAGES [S6603–S6616]

Public Company Accounting Reform and Investor Protection Act of 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Gramm (for McConnell) amendment No. 4200 (to amendment No. 4187), to modify attorney practices relating to clients.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, this has been cleared by both managers of the bill. We have had a number of inquiries about the need for more time to talk on various issues. As the Chair knows, from 12:30 until 2 o'clock, we have our policy luncheon, and normally we don't have votes.

I ask unanimous consent that the previously scheduled order, which provided that Senator Enzi be recognized at 12 noon today to make a motion to table the McConnell amendment No. 4200, be modified to provide that the recognition of Senator Enzi occur at 12:45 today, with the additional 45 minutes, from 12 to 12:45, equally divided and controlled between Senators Sarbanes and Gramm, or their designees, and that all other provisions of the previous order remain in effect.

Mr. DORGAN. Mr. President, reserving the right to object, I would like to engage in a brief discussion with my colleague from Nevada under my reservation of an objection, if I might. I shall not object to the specific request of the Senator, but I have just visited with the Chairman of the Committee and you know there exists a list of amendments that Members of the Senate wish to offer to this legislation.

As I have watched this process over the last couple of days, it appears to me that we have set up a gatekeeper of sorts for determining who will offer amendments and whether there will be votes on the amendments, and it appears to me we are not making very much progress. I would like to get some sense of whether we have a clear process beginning this afternoon, so that this afternoon and this evening we might be able to move through 6, 8, 10 amendments and get time agreements so Members of the Senate have the opportunity under the rules to offer and have considered amendments that they consider important in this legislation.

Mr. REID. Mr. President, I say to my friend, the chairman of the committee has worked for hours and hours trying to get movement so people could offer relevant amendments. We have been not very successful, to be very candid with the Senator from North Dakota. I have stood by the Senator from Maryland and coerced, urged, and we haven't gotten to the debating point yet. We have done everything we can.

There are a number of Senators, not the least of whom is the Senator from North Dakota, who have amendments. There is the Senator from Michigan, the Senator from New York, and others who have spent a lot of time wanting to offer amendments. We are doing everything we can. We hope the Enzi motion to table will break some of this loose.

I say to my friend from North Dakota that we understand how he feels. The only thing I will say is there is no gatekeeper. On one bill the two managers said they would oppose any amendment that was not relevant, but that is not the case now. The Senator from Maryland has expressed to me that there are some relevant amendments which should be offered. He has done everything he can to——

Mr. BYRD. Mr. President, who controls time?

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia controls the next 45 minutes. There is a unanimous consent request pending.

Mr. BYRD. Mr. President——

Mr. DORGAN. Mr. President, reserving the right to object.

Mr. REID. If I can ask my friend to let me finish. I ask unanimous consent that the time in the colloquy between the Senator from North Dakota and the Senator from Nevada not take away from the time of the Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, continuing on my reservation—and it is not my intention to delay the Senator from West Virginia—I want to try to understand what is happening.

First, my comments should not in any way suggest that the chairman of the committee hasn't done an extraordinary job. I have great respect for him. But it has been difficult to get amendments up and get votes on them in the last day or two. There are a good number of very important amendments.

Under the reservation, I say that we know what has happened to the stock market in the last few days. We know this is a critically important issue—this legislation and the amendments to it. We ought not to treat this lightly. This piece of legislation ought to be on the floor and open for amendment, having a robust discus-

sion on the very important issues dealing with corporate responsibility.

Instead, what is happening is we have a couple people on the floor who seem to want to stall this process and prevent amendments from being considered in order. I hope—and I will come back after lunch today—to offer at least two amendments. I want to debate them and get them voted on. At least as a Senator I have a right to do that.

It is very important to me that I be able to add these amendments. If the Senate doesn't like them, fine, we will vote. But it is important to me to have that opportunity. I shall not object to the unanimous consent request with respect to the tabling motion.

I wanted to say to the Senator from Nevada and the Senator from Maryland, who have done everything humanly possible to try to make this process work, that there are others in the Chamber who are trying to drag this process out and prevent others from offering amendments. I am going to assert my rights, to the extent I can, to say that before this bill is completed we need to have the best ideas everyone in the Senate has to offer about how to do this job.

The economy in this country is in significant trouble. We know it. The confidence the American people have in this economy and corporate governance has been shattered in many ways. It rests upon the shoulders of this institution to pass this legislation and do everything we can to make it the best piece of legislation possible to restore that confidence and give some lift to this economy. I wanted to make that point.

I appreciate the indulgence and the patience of the Senator from Nevada. If the Senator from Maryland will give me a chance to say this once again: In no way am I saying the Chairman hasn't done everything humanly possible to move this along. He wants to move quickly. I shall not object.

Mr. GRAHAM. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I express my great admiration for what Senator Sarbanes has done in presenting to America such a meaningful piece of legislation to deal with one of the great scandals that has occurred in the history of our free enterprise system, and taking a step toward restoring the confidence of the public in the investment community.

But as Senator Dorgan, I have an idea which, in fact, in one instance, is parallel to Senator Dorgan's; that is, I believe we need to be very clear that we are applying the same standards to corporations that have their corporate headquarters inside the United States as we do to corporations that take advantage of our capital markets and have chosen to locate or relocate their headquarters outside of the United States.

Mr. REID. Mr. President, I am reclaiming my time.

Mr. GRAHAM. Reserving the right to object, there are enough incentives to do that already in the Tax Code and otherwise. We should not be creating additional incentives for companies to run from their responsibilities within the United States. My specific——

Mr. REID. Mr. President, I want the floor back.

Mr. GRAHAM. I am raising this today——

Mr. REID. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. GRAHAM. Mr. President, I am reserving my right to object.

Mr. REID. Mr. President, I have the floor.

Mr. GRAHAM. I will conclude my comments in short order.

The PRESIDING OFFICER. The Senator can either object or not. Reserving the right to object occurs at the indulgence of those who have the floor.

Mr. REID. Mr. President, we have built in time for people to speak. It is not fair to Senator Byrd and others who have been waiting to speak. I have no problem with Senator Graham coming. I agree with his position. There is time to be allowed under this unanimous consent agreement. Otherwise, the time will be all gone, and there are two Senators who have an hour and a half, by virtue of a unanimous consent agreement entered into last night.

It is not fair to use the extra half hour with these speeches that are taking away from Senator Byrd and Senator McConnell.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object, just for the purpose of concluding my remarks.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I will be happy to yield to the Senator when I get the floor. We cannot make long speeches on reservations to object. We either object or we don't. I object and then I will be happy to yield to the Senator. I want to be fair. Am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. How much time does the Senator wish?

Mr. GRAHAM. Just 1 minute.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Florida for 1 minute, reserving my right to the floor.

Mr. GRAHAM. I appreciate the courtesy of the Senator. I want to bring to your attention an article from the Washington Post today. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SEC CHAIRMAN PITT A POTENTIAL LIABILITY TO ADMINISTRATION

(By Dana Milbank)

While President Bush was delivering his long-awaited speech on corporate governance Tuesday, Securities and Exchange Commission Chairman Harvey L. Pitt was exactly where many Bush aides wanted him to be: on a week-long beach vacation.

"We were not surprised that the Chairman was not included in Administration plans for public appearances," SEC spokeswoman Christi Harlan said. "The commission is an independent agency."

White House officials, though calling it a coincidence, acknowledged they had no desire for Pitt's presence.

The arms-length treatment of Pitt underscores a dilemma for Bush and his radioactive SEC chairman. Many Democrats and even a few Republicans have called for Pitt's resignation because of his alleged conflicts of interest and ties to the accounting industry. There is no sign that Bush is even thinking of dropping Pitt. But whether Pitt stays or goes, he is a potential liability.

Dismissing Pitt would violate the Bush code of loyalty and would be viewed as validating Bush's critics, from Senate Majority Leader Thomas A. Daschle (D-S.D.) to Bush's Republican nemesis, Sen. John McCain (Ariz). "Dropping Harvey Pitt right now would be an acknowledgment of wrongdoing where there's been no wrongdoing," said GOP lobbyist Ed Gillespie, a former Bush campaign aide.

Forcing Pitt out would also open the White House to charges of interfering in the SEC's investigation of Halliburton Co.'s activities when Vice President Cheney was its chief executive. Underscoring that danger, Halliburton shareholders yesterday filed a fraud lawsuit in Dallas against the company and Cheney. White House Press Secretary Ari Fleischer said the suit is "without merit." That prompted Larry Klayman, whose group, Judicial Watch, represents the shareholders, to accuse the White House of seeking to influence the SEC's investigation.

Yet Pitt's presence as the Government's top securities watchdog carries dangers for Bush, too. Even some Pitt defenders say his close ties to the accounting industry limit his credibility as a reformer. In his first speech as SEC Chairman last year, Pitt told an audience of auditors that the SEC would be "a kinder and gentler place for accountants."

"Pitt has been in hot water since day one and WorldCom turned it into a full boil," said GOP operative Scott Reed. Because Bush will not drop Pitt, Reed said, "McCain and the Democrats have turned him into a political pinata, and that will continue ad infinitium."

Democrat Chris Lehane, who defended Bill Clinton and Al Gore during that Administration's scandals, said Bush is making the wiser political choice in keeping Pitt, even though Pitt could undermine faith in Bush's reforms. "Pitt could do everything right and nobody's going to give him credit for it," he said.

Pitt's foes point to his past legal work for executives of now-sullied corporations, including MCI, Merril Lynch & Co., Arthur Andersen LLP and other accounting firms. He has also been criticized for meeting in April with a former client, KPMG Consulting Inc., while KPMG's audits of Xerox Corp. were being investigated by the SEC. Critics also say that as a lawyer, Pitt favored restricting Federal oversight of auditing firms. Over the years, Pitt has represented figures such as Ivan Boesky and Michael Saylor in SEC actions.

Bush, in his Monday news conference, generously defended Pitt. "I support Harvey Pitt—Harvey Pitt has been fast to act," Bush said. Later, Bush added: "I'm going to give him a chance to continue to perform."

Privately, Bush has expressed amazement at the conflict-of-interest charges. "It's only in this town that people want someone who doesn't know what they're talking about to lead an agency," he told Congressional Republicans visiting the White House yesterday.

Pitt has an unlikely defender in Lanny J. Davis, one of President Clinton's scandal handlers. "The attack being made by Democrats could be made on most anyone for having conflicts from prior positions," he said. But Davis said the Administration has been making matters worse. "The more you bottle up Harvey Pitt, the more you allow Democrats to make him an issue," Davis said.

Observers on both sides expect Pitt to make a public effort to build his credibility by demonstrating that he can be hard on his old friends. Indeed, some in the Administration joke that Pitt will come to resemble a model Democratic SEC Chairman, one heavy on regulations.

The White House has distributed evidence of Pitt's activity on the job: requiring chief executive and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures; seeking to bar 54 officers and directors; and issuing a long list of new reporting rules and regulations.

Pitt was not Bush's first choice for the SEC job, and officials say he continues to be far from Bush's inner circle. The reforms Bush announced Tuesday were developed largely by Treasury Secretary Paul H. O'Neill and White House Deputy Staff Chief Joshua Bolten, with help from Bush economic advisers Lawrence B. Lindsey and R. Glenn Hubbard.

But Bush is stubborn about demonstrating loyalty to his aides, which enables him to claim reciprocal loyalty. Officials say he continues to defend Army Secretary Thomas E. White, embattled because of his Enron Corp. ties and personal travel, because White has been faithful to Bush.

But when underlings act disloyal, Bush can quickly cut them loose. Linda Chavez was dropped as Bush's nominee to be Labor Secretary when it appeared she had misled those vetting her background. Michael Parker, the Civilian Chief of the Army Corps of Engineers, was ousted for complaining about administration budget cutting.

Pitt so far has demonstrated fealty to Bush, and Bush aides remain loyal to him. "The best thing to do is vigorously enforce the law, and that's what he's doing," Lindsey said.

Mr. GRAHAM. In this article, the President of the United States has given as one of his reasons to continue his support for the Chairman of the Securities and Exchange Commission, Chairman Harvey L. Pitt, the fact that Mr. Pitt has required chief executives and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures.

What was left out were all the American companies which have their corporate headquarters outside the United States of America. Apparently, the Chairman of the SEC believes he can discriminate and apply a principle only against those corporations which are sited in the United States and exclude corporations outside the United States.

That is an irrational and unfair distinction and one that we should correct as promptly as possible in this legislation.

I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, will the Senator yield for a unanimous consent request?

Mr. BYRD. Gladly.

Mr. REID. Madam President, I renew my unanimous consent request.

The PRESIDING OFFICER (Ms. LANDRIEU). Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Madam President, since the revelation last month of yet another corporate accounting scandal—this time involving the second largest telecommunications provider, WorldCom—the Bush Administration seems to have lost its patience with corporate America. In fact, from the rhetoric we have heard from the Administration in recent weeks, I expected to hear the President tell corporate America this week that his top advisors had been in the White House basement planning, not just a corporate fraud task force, but a new Department of Corporate Security.

The President said last month at the G8 summit in Canada, "The revelations that WorldCom has misaccounted [$3.8] billion is outrageous."

In his June 29 weekly radio address, the President warned corporate America that "no violation of the public's trust will be tolerated. The Federal Government will be vigilant in prosecuting wrongdoers to ensure that investors and workers maintain the highest confidence in American business."

The President apparently is so miffed with these corporate "wrongdoers" that he has elevated them in his rhetoric to a bad-guy level that is almost, but not quite as bad, as al-Qaeda's "evildoers." Almost the same level; perhaps not quite.

WorldCom president and CEO John Sidgmore, in a June 28 letter to President Bush, joined the President in expressing his outrage. "I want you to know that we, the current management team, are equally surprised and outraged . . . about past accounting irregularities at WorldCom," he said.

So the Bush Administration and the CEO of WorldCom now both agree that American corporations teaming up with unscrupulous (or incompetent) accountants to mislead shareholders about how much money the company is making is an “outrageous” practice.

Madam President, how comforting it is. As Jackie Gleason used to say: “How sweet it is.” How sweet it is. How comforting it is to know that we have finally reached a consensus on that issue.

Despite the excuses and the explanations, I find little credibility in the argument that certain corporate executives lacked sufficient knowledge to ask the right questions about their companies’ accounting practices.

If CEOs are worth their generous pay, one would think they could take the time to make sure that the company’s chief financial officer is not padding earnings by omitting costs from the balance sheet.

In fact, one finds disconcerting the acute lack of shame—the acute lack of shame—S-H-A-M-E—on the part of some of these corporate executives. Former Enron CEO Jeffrey Skilling told the House Energy and Commerce Oversight Subcommittee that Enron had tight control on financial risk, but that he could not be expected to oversee everything and “close out the cash drawers . . . every night.”

Can you imagine that kind of statement? I think it was Wordsworth who said: No matter how high you are in your department, you are responsible for what the lowliest clerk is doing.

Let me repeat that. Wordsworth said: No matter how high you may be in your department, you are responsible for what the lowliest clerk is doing. That was William Wordsworth. Let’s take that statement and put it beside the statement of former Enron CEO Jeffrey Skilling when he told the House Energy and Commerce Oversight Subcommittee that Enron had tight controls on financial risk but that he could not be expected to oversee everything and “close out the cash drawers . . . every night.” Oh, that poor man. What a heavy burden he carried. That poor man. We can all shed crocodile tears for someone who is put into that very difficult position and then consider the kinds of salaries these people draw down.

Shakespeare said: “The quality of mercy is not strain’d, it droppeth as the gentle rain . . . upon the place beneath.” I will tell you, it does strain gentle mercy when we read about these scandals that have swept over this country and how these people plead the fifth amendment when they are called up before Senate committees and House committees—plead the fifth amendment. That is a stunningly irresponsible attitude for a chief executive.

It is something that you might hear from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. You might hear that from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. But we are not talking about a handful of change. We are talking about the American public. Those eyes that are peering—they are peering at this Senate floor at this very minute through the lenses of those cameras. They are the taxpayers out there. I see them looking through those cameras.

I see them in West Virginia. I see them in Texas. I see them in Wyoming. I see them in New York looking through those cameras.

We are talking about them, the American public having lost by some estimates tens of billions—not millions—tens of billions of dollars of invested savings in companies that issued false—the Ten Commandments, I keep them on my walls; some of these CEOs should keep them on their walls—financial reports and tens of thousands of workers who have lost their jobs, and many have lost their meager earnings that they, too, invested, that is what we are talking about.

So here is an individual who tells a House committee he cannot be expected to oversee everything and close out the cash drawers every night—such a stunning, irresponsible, arrogant attitude on the part of a chief executive. I say again it is something that you might expect to hear—you might—from the teenage manager of a fast food restaurant who could not account for a handful of change missing from the cash drawer at the end of the night.

We are not talking, let me say again, about a handful of change. We are talking about the American public, those people out there, Republicans and Democrats and Independents, in the Alleghenies, along the eastern coast, on the storm-beaten coast of Maine, the fishermen on the mighty deep, the people in the Plains and the Rockies and beyond. These are the people, north and south, the public. We are talking about the American public having lost, by some estimates, tens of billions of dollars of invested savings in companies that issued false—and they knew they were issuing false—financial reports. Tens of thousands of workers who have to wash the grime from their hands and their faces, workers in the fields, in the mines, in the shipyards, those are the people we are talking about, the public, tens of thousands of workers who have lost their jobs.

Even after these corporations' fraudulent accounting, somebody ought to go to jail, and the doors should be locked and the keys thrown away. Throw away the keys. It really would not be too severe a punishment for some of these four-flushers.

Even after these corporations' fraudulent accounting methods are exposed, the accounting games seem to continue. After telling the Securities and Exchange Commission that it hid nearly $4 billion in expenses last year, WorldCom submitted revised financial reports to the SEC which the SEC Chairman, Harvey Pitt, immediately called wholly inadequate and incomplete. Apparently, WorldCom's revised financial statements included additional accounting errors dating back to 1999 and 2000. That, Chairman Pitt said, could add at least $1 billion to the company's financial revision.

No wonder the trust of those people is broken. No wonder the public's trust in corporate America has eroded. What kind of trust can the public have in companies that hide information in an effort to pull the wool over the eyes of American investors?

After WorldCom's announcement, the Bush Administration sharpened its rhetoric and is now working to assure the American public that it recognizes the importance of transparency and disclosure. The Chairman of the White House Council of Economic Advisers, Glenn Hubbard, said in an interview last month that the

President wants to reassure investors about the economy while also delivering a shot across the bow to leaders of corporations that abuses of the public trust will not be tolerated.

In the midst of Congressional hearings last March, after the collapse of Enron, the President lectured corporate America about how to regain the public's trust. He said corporations must disclose relevant facts to the investing public and they must focus on the interests of shareholders, who are the real owners of any publicly held enterprise, to properly inform shareholders and the investing public that we must adopt better standards of disclosure.

That is nice rhetoric, but this Administration hardly sets the model for openness and transparency. In fact, this is an administration that prides itself on operating in secrecy and governing by surprise. Remember the secret government that was being set up? In fact, this is an administration, let me say again, that prides itself in operating in secrecy and governing by surprise.

I find it difficult to watch this Administration lecture corporate America about virtues of disclosing information to the public while at the same time it is restricting the public's access to information about its own executive actions.

Last October, Attorney General John Ashcroft issued a memo encouraging Federal agencies to withhold unclassified records under the Freedom of Information Act, the law that gives the American public the legal right to certain Government information. The Attorney General even told the Federal agencies that the Justice Department would defend agency decisions to deny FOIA, Freedom of Information Act, requests.

Last November, the President issued an Executive Order to limit access to Presidential papers that, under the Presidential RECORDS Act of 1978, would normally be made available to the American public. The Executive order allows a former or a sitting President to block the release of records requested under the law by invoking "constitutionally based privileges." The words "constitutionally based privileges" are in quotation marks.

The American people would have to go to court to challenge the privilege claim. The order could even permit a former or incumbent President to impede requests for old records simply by withholding approval for their release, effectively negating the need for the Chief Executive to even make the claim of executive privilege.

We have had our own little taste of this side of the coin from the executive branch as we on the Appropriations Committee, Senator Stevens and I, tried to have the Administration let Tom Ridge come up before the committee and testify.

Then we see this creation of this mammoth reorganization of Government that sprang like Minerva, fully clothed and armed, from the forehead of Jupiter.

When this Administration's chief executive talks about adopting better standards of disclosure, I hope that these executive actions are not what he has in mind. These are just examples of the Administration directly restricting the public's access to government information. The Administration has also moved to limit access by Members of Congress, who are elected by the people and responsible for the oversight of executive actions in the public's behalf.

Last December, the President gave notice that he was unilaterally withdrawing the United States from the Antibalistic Missile Treaty, allowing the Administration to begin development of a new antibalistic missile defense system. Soon after, the Pentagon began to exempt missile defense projects from traditional reporting requirements and Congressional oversight, an overt attempt to keep the Congress and the American people in the dark about the progress of that system. As the Administration requests additional defense funds, the Pentagon is taking further steps to shield cost estimates and time tables from the Congress, making it harder to keep the Administration accountable for technical and budgetary assessments.

The Dark Ages were supposed to have ended in about 1000 A.D. They lasted 1,000 years, the Dark Ages. Reminiscent of the Dark Ages, an administration that believes in keeping a Congress in the dark, the American people in the dark, and we are hearing a lot of sword rattling about it. An attack on Iraq—the Administration should level with the Congress. It is an equal branch. It is not a subordinate branch to the Government. It never has been, and I hope never will be. Let's hear more about this plan to invade Iraq. Watch out for August when Congress is out of town, or before the election. Who knows?

This reorganization of Government sprang like Aphrodite from the ocean foam, and she was carried on a leaf to the island of Crete. She later appeared in full dress before the gods on Mount Olympus. They were stunned with her beauty.

This is what we see. These ideas sprang from where? This idea to reorganize the Government—and I am concerned it will also reorganize the checks and balances of the Constitution unless we are watchful—sprang from the bowels of the White House, the creation of four individuals who are named in the public press. Not exactly the equal, perhaps, of that committee that wrote the Declaration of Independence—Thomas Jefferson, Benjamin Franklin, Roger Sherman, John Adams, and Livingston, those five. Not exactly.

But look at all the commotion that ideas has created. Look out, the Congress is being stampeded into putting its imprimatur on that idea. Well, some parts of the idea may be OK, but we should not be in too big a hurry.

And that is to say nothing of the fact that these executive actions toward secrecy have occurred during a period in which the President has refused to allow Tom Ridge, in his capacity as the Director of Homeland Security, to testify before the Congress, and in which the Comptroller of the General Accounting Office was forced to sue the Vice President of the United States to obtain information about the White House energy task force and its connections to Enron.

These are not the actions of an administration that believes in the virtues of disclosing information to the public. This is an administration that not only embraces the idea of operating in secrecy, but flaunts its abilities to hide information from the Congress and the American public.

Upon announcing its proposal for a new Department of Homeland Security, the Administration bragged to the media about how the plan had been pieced together by just four men and a few trust-

ed aides in the basement of the White House. As the work became more detailed and the working groups expanded, the code of silence was gravely explained to each new arrival. At the end of each meeting, all papers were collected: nothing left that room, we've been told. The work was completed before any member of the Congress was briefed on the plan. White House Chief of Staff Andrew Card even arrogantly proclaimed, "We consulted with agencies and with Congress, but they might not have known we were consulting."

Now, get that. I can hardly believe my eyes, except my eyes have seen this prior to my having stated it on the floor. White House chief of staff Andrew Card even proclaimed—I used the adverb "arrogantly," I will put it back in—White House chief of staff Andrew Card arrogantly proclaimed, "We consulted with agencies and with Congress but they might not have known we were consulting."

What a reflection on Congress. What is he saying about Congress? That is hardly a model of transparency that I want corporate America to follow.

We don't want to hear corporate CEOs saying we shared information with the American public, but they might not have known we were sharing it with them. The Administration's euphoria for secrecy seems motivated in large part by its desire to implement a political agenda. That is what it is. A political agenda, regardless of whether it has the support of the American people.

Mr. REID. Will the Senator yield?

Mr. BYRD. I would be glad to yield.

Mr. REID. Mr. President, I have been listening to the Senator from West Virginia give his speech, and I am of the opinion maybe the reason all that secrecy takes place is they are running the White House like people run corporations. Rather than having a public institution as the Administration and White House should be, maybe they are running the White House like a corporation.

I say to my friend that the White House, this Administration is covered with corporate America. Maybe they think the White House is to be run like a corporation.

Mr. BYRD. The distinguished Senator from Nevada introduces an interesting idea. Maybe they do. Maybe anything goes. All is fair in love and in war they say. Now we can add, big business. Big business.

That is not a fair thing to say about many big businesses really because many of the people in big business are honest and try to do the right thing. They are open, they are transparent. It is too bad a few bad apples reflect on the whole barrel. I used to sell produce. I was a produce boy, married, with children coming on, and I found that a few bad peaches would quickly ruin the whole bushel. The same thing with apples and other fruits and so on.

When the Administration's polls suggest opposition to certain policies from the American public, it limits access to information about that policy. I fear that the American public, and their elected representatives in Congress, at times are viewed by this Administration as some sort of obstacle or hurdle that is to be avoided. There is a contempt, there is an arrogancy in this Administration, there is a contempt for Congress. They hold Congress in contempt.

This kind of executive mentality can only emanate from the arrogance of an Administration that believes the White House is the fountain of wisdom in Washington. Wisdom is the principal thing. Such a mentality is dangerous, it is absolutely dangerous. I was here in the Nixon Administration. I remember what happened to that Administration. Such a mentality is dangerous. We need only look to the corporate accounting scandals which this Administration has so harshly criticized in recent weeks to see why.

Most economic pundits seem convinced that the hyperactive stock market of the late 1990s was the catalyst for a slow, steady deterioration in professional and ethical standards in corporate America. The pressure on CEOs and companies to produce earnings, quarter after quarter, resulted in a kind of competitive behavior that encouraged companies to push the accounting envelope. Rising profits and stock prices provided cover for underlying ethical lapses. The longer the boom lasted, the more brazen these corporations became in cutting corners and taking a little more off the top.

By the end of the boom, many companies appear to have been engaged in the kind of fudging, gamesmanship and ethical corner-cutting that, while legal in some cases, was certainly less than ethical. Unfortunately, it was only after the stock market began its inevitable decline and great piles of money were lost that people began to ask the critical, penetrating questions that should have been asked earlier to prevent this kind of behavior in the first place. Those harder questions are now leading to accounting revisions, executive resignations, lawsuits, and criminal investigations.

So far, the reflexive instinct of the business community and the Bush Administration largely has been to blame a "few bad apples," but that assertion is hardly consistent with the fact that the SEC opened 64 financial-reporting cases between January and March of this year, and that almost a thousand companies, not just a handful, have been asked to recertify to the SEC their financial statements through the last fiscal year.

It is somewhat ironic that the actions of chief executives were protected by soaring stock prices, since the Administration finds itself in a similar position. Just like soaring stock, as long as the President's approval ratings remain high, presumably propped up by the American public's understandable desire to support the war on terrorism, the more latitude the Administration will be granted in restricting information about its executive actions under the guise of national security. This kind of culture can be extremely dangerous. It was allowed to flourish in corporate America during the late 1990s, and now threatens the public trust.

The Administration would do well to take some of its own medicine and make itself more transparent to the American public. For all of its expressed concerns about the public's loss of confidence in corporate America, this Administration seems to have given little, if any, consideration to the loss of the public's trust in government. That is the most basic of commodities in republican government. I do not refer to it, as many politicians who ought to know better glibly refer to this, our system, as a democracy. They ought to go back and read Madison's 10th and 14th essays in the Federalist Papers. They will finally learn the difference—or be reminded of

the difference. They probably have forgotten the difference between a democracy and a republic.

The public's trust in government—when the public loses its trust, when the public's trust is eroded, all is lost: The public trust. And sooner or later, high poll numbers will tumble, as they always do. We have seen them do it before.

Don't read the polls, I say to my colleagues, so assiduously, read the Constitution—which I hold in my hand. Read the Constitution. I say to the Administration, I say to the executive branch, read the Constitution. Don't be so enamored with the polls. They are fleeting. Read the Constitution.

This Administration's Chief Executive came into office touting himself as the first President to earn a master's degree in business Administration. That is certainly more than I have. He announced that he would run the White House like a modern-day corporation. Ha-ha-ha; watch out.

To be fair, the President probably didn't realize at the time that he would be faced with the exposure of a corporate culture—not all his. The President probably didn't realize at the time that he would be faced with the exposure of a corporate culture which encouraged shoddy auditing, negligent or criminal management, and impudent and secretive corporate CEOs.

In hiding its own actions from the public view, this Administration is fostering the same kind of arrogant, arrogant culture in which these corporate accounting scandals were allowed to flourish. This Administration would do well to take preventive measures to keep the nasty, nasty little seeds of arrogance and secrecy that have affected corporate America from taking root in the executive branch and threatening the public's trust.

I close with a Biblical parable: Pride goeth before destruction, and the haughty spirit before a fall.

I ask unanimous consent to have printed in the RECORD an article from today's Washington Post titled "Bush Took Oil Firm's Loans as Director"; and an article from today's Washington Times titled "Cheney named in fraud suit."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 11, 2002]

BUSH TOOK OIL FIRM'S LOANS AS DIRECTOR

(By Mike Allen)

As a Texas businessman, President Bush took two low-interest loans from an oil company where he was a member of the board of directors, engaging in a practice he condemned this week in his plan to stem corporate abuse and accounting fraud.

Bush accepted loans totaling $180,375 from Harken Energy Corp. in 1986 and 1988, according to Securities and Exchange Commission filings. Bush was a director of Harken from 1986 to 1993, after he sold his failed oil and gas exploration concern to the company. He used the loans to buy Harken stock.

Corporate loans to officers came under scrutiny after WorldCom Inc., the long-distance carrier that last month reported huge accounting irregularities, revealed it had lent nearly $400 million to Bernard J. Ebbers to buy the company's stock when he was chief executive. He resigned in April as the stock price tumbled.

Bush attacked corporate loans during his speech on Wall Street on Tuesday, when he offered proposals to tighten the accountability of corporate executives while stopping short of the tougher measures headed toward passage in the Senate. "I challenge compensation committees to put an end to all company loans to corporate officers," he said.

A senior Administration official, briefing reporters on Bush's plan, said Tuesday that Bush wants public companies to ban loans to their officers, including directors. "Corporate officers should not be able to treat a public company like their own personal bank," the official said.

The contrast between Bush's record as a business executive and his rhetoric in the face of corporate scandals underscores the challenge his Administration faces in trying to credibly foster what he calls "a new era of integrity in corporate America."

Bush was investigated by the SEC in 1991 for possible illegal insider trading, although the SEC did not take action against him, and he has admitted making several late disclosures to the agency, which regulates public companies.

Harken's loans to Bush—at 5 percent interest, below the prime rate—were reported several times in filings to the SEC in the years before the debt was retired in 1993 and were noted in news accounts at the time. The loans were for the purchase of Harken stock, which was then held as collateral.

Rajesh K. Aggarwal, a Dartmouth College professor who specializes in executive compensation and incentives, said such loans "are not unique, but are by no means widespread."

White House communications director Dan Bartlett said Harken offered the loans to directors to buy shares in the company as part of an incentive for board members "to have a long-term commitment with the company." Bartlett said the loans to Bush were "totally appropriate—there was no wrongdoing there."

"This is a common practice in small, medium and large companies," Bartlett said. "These recent abuses of certain types of loans led the president to believe that the government should draw a bright line concerning loans going forward. This is one of the main things that undermined the confidence of investors and shareholders."

Bartlett said the loans were for $96,000 in 1986, for 80,000 shares, and $84,375 in 1988, for 25,000 shares. He said that in 1993, Harken changed its compensation policies and discontinued the loan program. He said Harken converted to a program giving directors stock options, allowing them to buy stock later at a fixed price.

Bartlett, asserting that Bush did not profit on the loans, said Bush traded the 105,000 shares being held as collateral for the loans, retiring his debt. Bush then received 42,503 options under the new compensation plan, Bartlett said, The options were never exercised and expired after Bush left the board, Bartlett said.

With adminsitration officials privately expressing concern about the impact of so much fresh attention to old questions about Bush's career, the White House yesterday distributed talking points headlined "If you get asked about Harken" to Bush loyalists who might be contacted by reporters. Bartlett said the fact sheets were sent to members of Congress after they asked for them.

White House press secretary Ari Fleischer said aides to Bush have "talked to the private accountants and private counsels who are involved in the president's private transactions" while preparing answers to reporters' question during the growing debate over corporate responsibility.

Vice President Cheney also is receiving unwanted attention to his corporate past. The SEC is investigating an accounting practice begun by Halliburton Co., the Dallas-based energy services company, when Cheney was chief executive before joining Bush's campaign ticket.

Also yesterday, the White House refused to release records of Bush's service on Harken's board. Bush had pointed to those records during a news conference on Monday when asked about his role in the sale of a subsidiary. The transaction later was used by Harken to mask losses.

"You need to look back on the director's minutes," Bush said.

Bartlett said the Administration does not have the minutes and does not plan to ask Harken for them. "He personally would not have access to them," Bartlett said. "These are company documents. I can't release something I don't have."

Harken has declined to release board records ever since questions about Bush's record on the board were raised during his first campaign for Texas governor, in 1994.

Bartlett also said the White House would not accept a challenge by Senate Majority Leader Thomas A. Daschle (D-S.D.) on Sunday to ask the SEC to make public the records of its investigation into whether Bush had engaged in illegal insider trading of Harken stock.

Daschle said on CBS's "Face the Nation" that Bush would do well to ask the SEC to release the file. "We've had different explanations as to what actually occurred," Daschle said. "I think that would clarify the matter a good deal."

Bartlett said Bush will not do that. "Those are documents in the possession of an independent regulatory agency," Bartlett said. "I'm not in a position to call on them to do that. We've made available every relevant document we have in our possession."

Administration officials said they would take the same position about an SEC investigation that resulted in Harken's restating its earnings to show a $12.6 million loss for a quarter instead of an earlier reported loss of $3.3 million. Bush was a member of the board's audit committee.

[From the Washington Times, July 11, 2002]

CHENEY NAMED IN FRAUD SUIT

(By Patrice Hill)

Vice President Richard B. Cheney was named yesterday with the energy company he headed in a lawsuit by investors that cited bookkeeping practices under investigation by the Securities and Exchange Commission.

The lawsuit arranged by Judicial Watch, a government watchdog group, charges that Halliburton Inc. overstated its revenue by $534 million between 1998 and the end of last year by illegally booking revenue from oil construction projects that were in dispute and had not been collected from its clients. The suit says the accounting fraud resulted in overvaluation of Halliburton's stock, deciving investors.

Mr. Cheney was Halliburton's chief executive from 1995 until August 2000, after he joined the Bush presidential campaign. The White House and Halliburton yesterday said the suit was without merit but both acknowledged that the SEC investigation is continuing.

"We are working dilgently with the SEC to resolve its questions regarding the company's accounting practices," said Doug Foshee, Halliburton's chief financial officer. The claims in this lawsuit are untrue, unsupported and unfounded."

SEC Chairman Harvey L. Pitt has vowed to pursue the investigation. "We don't give anyone a pass," he told ABC's "This Week" on June 30. "If anybody violates the law, we go after them."

President Bush on Tuesday called for stronger SEC enforcement and longer prison terms for corporate executives found guilty of the kind of accounting fraud charged in the lawsuit. The suit was filed in the U.S. District Court in Dallas, where Halliburton is based.

A unified Senate approved harsh new penalties yesterday for corporate fraud and document shredding, adding enforcement teeth to Mr. Bush's plan to curb accounting scandals. In a series of unanimous votes, senators added the penalties to an accounting oversight bill moving toward passage.

Also named as a defendant in the lawsuit is the Arthur Andersen firm, Halliburton's former auditor, which was fired in April after the accounting firm was charged with obstructing an SEC investigation of Enron Corp. Andersen was convicted of the obstruction charge last month and is no longer permitted to audit public companies.

The suit says Andersen was a champion of "aggressive" accounting tactics and masterminded the bookkeeping maneuvers that defrauded Halliburton investors.

As evidence of Mr. Cheney's knowledge and approval of these maneuvers, the suit refers to his appearance in a promotional video for Andersen in which he said he got "good advice" from the firm, advice that went "over and above just the normal by-the-books auditing arrangements."

The lawsuit cites a critical accounting change made by Halliburton and Andersen in late 1998. Halliburton was facing losses because of a recession in the oil industry and cost overruns on construction contracts in which the company had negotiated fixed, or lump-sum, payment plans.

Before the accounting change, which was never formally disclosed to investors, Halliburton had booked the cost overruns as losses on such projects as long as they were in dispute and customers had not agreed to pay them.

But starting in 1998, the company booked payment for the cost overruns as revenue if it believed the disputes would be resolved and the customers would pay the bills.

As a result of this change, Halliburton showed a profit for several quarters in 1998 and 1999 when it otherwise would have posted losses, the suit charges. In some years, the disputed revenue appears to account for as much as half of the company's reported profits.

"Halliburton overstated profits that many American citizens relied upon," said Larry Klayman, chairman of Judicial Watch. "That's fraudulent security practices, and it resulted in those Americans suffering huge losses."

The suit says Halliburton and Andersen violated securities laws when they did not disclose and justify the accounting change in a letter to investors. Halliburton's

financial statements starting in 1998 do note, however, that it was booking uncollected revenue from cost overruns.

Mr. REID. Madam President, if the Senator will yield for a parliamentary inquiry.

Mr. BYRD. Yes. I yield.

Mr. REID. The Senator was allocated 45 minutes. Of course, we have other time. We have an extra 15 minutes. It is my understanding there are 4 or 5 minutes left. Is that right?

The PRESIDING OFFICER. There are 3½ minutes remaining.

Mr. REID. If the Senator so desires, we could also allocate 15 minutes to the Senator from West Virginia if he has more to say.

Mr. BYRD. Madam President, I thank the distinguished majority whip for his courtesies and generosity, and for his characteristic ways of helping his colleagues. I think I will let my remarks remain today as they are. I thank him.

I yield the floor.

Mr. REID. Madam President, while there are a couple of minutes remaining of the Senator's time, I am sure the chairman of the committee joins with me in expressing our pleasure at being able to listen to such a profound statement which the Senator made. I think it again is what this is all about. By "this," I am talking about the legislation.

I talked with a friend of mine. We played football together as young men. He runs a company in Las Vegas. He said: Harry, I took all of my money out of the stock market. I will never invest in the stock market until something is done. He said: I am afraid. I said: We all feel that way.

I think the Senator really condensed what is going on in corporate America. It needs to be changed, and hopefully this legislation will help that.

Mr. BYRD. Madam President, let me express my gratitude to the distinguished Senator for his comments.

And with respect to the manager of this legislation, let me state without any equivocation that this is one of the finest minds I have seen in the Senate. I have been here 44 years. I have seen the equivalent of the entire Senate come and go, and I have never seen a sharper intellect. I have seen some Sharp ones—John Pastore, Herman Talmadge, and there are others. I have never seen any sharper than that of Paul Sarbanes, in my judgment. I don't know a great deal about the intelligence quotients. I don't know what the high range is. I assume it could be 150, or 155, or 160—whatever it is. Paul Sarbanes is the brightest.

Also, he has a way about him of not flaunting his intellect in front of others. Most of us—not because of that kind of intellect—have been inclined to speak more often—maybe too much, and perhaps I do already, but not because of that kind of intellect. But I salute the manager and commend that kind of intellect. He applies it. I watch him in the committees, and I watch him on the floor as he manages a bill. He is never a man to act in haste, or to be too rhetoric in haste. I admire his patience. He is plotting; he is studying; he is working; and he is extremely effective.

When I was majority leader, there were certain Senators I would call into my office from time to time. I would try to pick their

brains as to what we should do on this or that. Scoop Jackson was one. Paul Sarbanes is always there.

Mr. REID. Madam President, will the Senator yield for a comment?

Mr. BYRD. Yes.

Mr. REID. What the Senator is saying is that the Rhodes Scholar Committee a number of years ago made a good choice in selecting Paul Sarbanes to be a Rhodes scholar. Is that what the Senator is saying?

Mr. BYRD. I am saying exactly that. I am happy the distinguished Senator put it that way.

This bill before the Senate is the product of that kind of mind, that kind of attention, and that kind of dedication.

I hope we can pass this bill with an overwhelming vote, and, also in conference so that when put on the President's desk he can sign it. I am eager to support it in any way I can.

Before I yield the floor, let me say that when we talk about intellect and sharp intellects, this man from Texas, Phil Gramm, is another. He is sharp. I have talked to my staff many times about that kind of intellect. He can talk about anything. He doesn't need a script. I have prided myself on working with him on several challenges, and I have found him to be fair and straightforward.

I admire people—like these two—having that kind of sharp intellect.

I was told by an old Baptist pastor, former chief chaplain in the Army during the war—I don't remember which war it was. But he always said: The mark of brilliance is to surround yourself with brilliant people.

I am really proud to look around this Chamber and see people such as Paul Sarbanes and Phil Gramm. Sometimes I say that North Dakota has the highest overall quotient, perhaps of all, with its two Senators—Senators Conrad and Dorgan. I don't know whether they are Rhodes scholars or not. I am not a Rhodes scholar. I was not fortunate enough. I just barely made it by working at night for 10 years just to get a law degree. But these people make me proud to serve in this body.

Let me yield to the Senator from Maryland.

Mr. SARBANES. Madam President, I thank the distinguished Senator for his extraordinarily generous remarks. I am very appreciative of them.

I want to echo what the very able Senator from Nevada said about the Senator's eloquent address just a few minutes ago, which is reflective of the pattern that he has established—which is to go on the floor of the Senate and go to the very fundamentals of what our system is all about. His constant reference to the Constitution draws us back to those fundamentals. The Senator has always put before the Senate this broader and deeper vision of why we are here, what we ought to be doing, and calling us back to our basic principles as a Nation—right back to the Founding Fathers—as the Senator pointed out in his talk today. Important aspects of that are being challenged today in a very serious way.

I echo what my colleague said and express my appreciation to the Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator. I am going to yield the floor.

Before I yield it, I apologize to the distinguished Senator from Kentucky, Mr. McConnell. He is a Republican and I am a Democrat.

I have been known to go down into Kentucky at his invitation and speak, and I value his friendship. I apologize to him for imposing on his time.

Mr. GRAMM. Before the Senator yields, if he would yield very briefly to me, I thank him for his very sweet comments. I am very happy to be named along with Paul Sarbanes. And someday when I am talking to my grandchildren about the fact that their grandpa actually was a pretty important guy in his day—though his mind, I am sure, at that point will have seemed to have largely slipped away—I will say: I got to serve with the great Robert C. Byrd.

Mr. BYRD. I thank the Senator.

AMENDMENT NO. 4200

The PRESIDING OFFICER. The Senator from Kentucky will now be recognized for up to 45 minutes.

Mr. MCCONNELL. Thank you, Madam President.

I rise to speak on behalf of the McConnell amendment which will be voted on sometime in the not too distant future. It is my understanding that my own colleague, Senator Enzi, may make a motion to table at the end of the debate. So let me, at the outset, say I support the Edwards-Enzi amendment.

The second-degree amendment that is pending at the desk, which I will shortly discuss, does not, in any way, change or diminish the Edwards-Enzi amendment. I think it is a good idea. However, I think it simply does not go far enough.

I also supported the Leahy amendment yesterday after my amendment to combat union fraud was defeated. I will continue to support responsible corporate accountability measures in this bill.

My only point is, corporations do not have a monopoly on misconduct, deception, and fraud. As long as we are addressing professional misconduct, deception, and fraud, we ought to recognize this is a problem in our entire professional culture, not just in corporate culture. Let me repeat that. This is a problem in our entire professional culture, not just in corporate culture.

I understand the mood at the moment is to beat up on corporations. And they deserve it. That is what the underlying bill is about. On the other hand, to ignore other areas of abuse, it seems to me, is to miss an opportunity to address the problem in a broader way.

The Senator from North Carolina raises real problems with the ethics and conduct of corporate lawyers. I commend him for that. And I commend the Senator from Wyoming for that. But I have long sought to curb similar and well-documented abuses in the general practice of law, specifically in the case of personal injury law.

Let me say at this point that the McConnell amendment applies only to Federal claims and Federal courts. We are talking here about Federal claims and Federal courts. My point in offering this amendment is not to obstruct but to extend and enhance our debate on professional conduct.

We ought to set standards for corporate attorneys. I favor that. And we ought to set standards for personal injury lawyers as well. Corporations and corporate attorneys do not have a monopoly on misconduct. We are doing a real disservice to the American public if, during this important debate on professional misconduct, we turn a blind eye to abuses in our society that have been piling up way before—long before—Enron, WorldCom, and Global Crossing.

All too often we hear stories about lawyers who take advantage of their clients by not informing them of the legal fees and costs those clients will incur. This sad practice results in consumers of legal services receiving next to nothing in personal injury and other claims.

Let me recount the story of Diana Saxon. Ms. Saxon was a victim of, among other things, attempted forcible rape. The defendant was convicted, and Ms. Saxon brought a personal injury action against that defendant. The attorney she hired said the fee he was going to charge was 40 percent, plus costs.

Ms. Saxon received an award of $25,000. Of that, per her agreement, $8,300 went to her lawyer in attorney's fees. But an additional $20,716 went to her lawyer for expenses. However, none of those costs was made known to Ms. Saxon during the course of the litigation. She was only informed of them after her case was concluded.

Now, it gets even better—or, for Ms. Saxon's unfortunate situation, it gets worse. After her lawyer charged her his costs, she ended up owing her attorney $4,000—$4,000. That is right. For poor Ms. Saxon, she was actually left over $4,000 in the hole, in debt.

Now, to be fair, Ms. Saxon's lawyer was actually magnanimous in that he waived a few costs and a small portion of his fee so that she was actually able to walk away with the princely sum of $833—$833.

In his letter to her, where he agreed to offer her these few hundred dollars from her award of $25,000, he wrote:

> I'm agreeable to pay the sum of $833. This is the only money you will receive from your $25,000 settlement.

So, in sum, even though Ms. Saxon's lawyer told her that the lawyer would get 40 percent of her award, plus costs, in reality, after including these costs, he got 96 percent—96 percent—of her award. That is right, 96 cents on every dollar that Ms. Saxon received.

We need to make sure that consumers of legal services are not duped by this type of inaccurate and incomplete information.

Let me quote Ms. Saxon. She has put the problem better than I could. Here is what she had to say:

> This is not how our civil justice system is supposed to work. What happened to me should never happen to anyone again. You have a chance today to make a difference by passing a law to protect people from the kind of thing my attorney did to me. Had I known in advance or at some point along the way how little of my lawsuit was going to benefit anyone but my lawyer, I might have thought different about enduring 2 years of emotional trauma during the litigation.

Summing up what she had to say: Had she had any idea how little of the money she might get, she might not have wanted to endure the trauma of this litigation for 2 long years.

Now, Ms. Saxon, in a sense, was lucky in that at least her lawyer told her she would be liable for costs, although he obviously did not tell her the magnitude of the costs she was looking at and, thereby, completely misled her.

But as these excerpts from the Yellow Pages here in the District of Columbia area phonebook indicate, some lawyers are not even that candid.

So let's take a look at the first chart out of the DC phonebook. On this first chart, we have an ad with the big banner entitled "AUTOMOBILE ACCIDENTS." There is a line almost as big—the fourth line down—proclaiming: "No Recovery, No Legal Fees"—"No Recovery, No Legal Fees." It does not say anything about the cost the plaintiff is going to have to bear and, therefore, does not paint an accurate picture.

Let's take a look at the second chart, again out of the DC phonebook. It has a big banner down the right side entitled "PERSONAL INJURY." At the top is says: "Personal Injury Lawyers Who Put You First." "The Firm Boasts an All-Star Roster of Top Personal Injury [Lawyers]." And it makes the point: "No fee if no recovery." But, again, like the last ad, it does not mention at all anywhere in the ad—nowhere in all of this ad—that the client will be liable for costs.

Let's take a look at chart No. 3. This ad is marginally—marginally—better. At the top of the ad there is a headline, in bold, saying: "Legal Problems Require a Lawyer." Obviously, legal problems require a lawyer. About midway down is a line item saying: "Call me. I can help." "Call me. I can help." And right below this line, another line says: "No Legal Fee If No Recovery." In a little bit smaller print you will notice, "No Legal Fee If No Recovery." But this lawyer, at least, to his credit, has an asterisk by this line. If you look very carefully, you see an asterisk; and way down here at the bottom of the ad, in minuscule print—which might require you getting your glasses adjusted or to get a magnifying glass—it says: "Cost May Be Additional."

This lawyer at least gets credit in his ad for mentioning that there might be some cost, although you better have your glasses adjusted in order to find it.

Chart No. 4 is a familiar pitch, that there be "no legal fees unless recovery." This lawyer, to his credit, at least has it in print large enough to where you might actually see that line. But there is, of course, an asterisk; down here at the bottom, again, in tiny, minuscule print, "Clients may be responsible for reasonable fees."

This lawyer, at least, gets some credit—be the print ever so small—for pointing out that there could be a cost involved, and maybe a careful client would see that in the ad.

Chart No. 5, really my favorite one, it has a big banner at the top, "accidents," all the way across the top. You wouldn't have any trouble missing that. Underneath, "No legal fee if no recovery." Very enticing observation to an injured client, potential client, and there is an asterisk after it.

Going to the bottom of the page, below the Visa and MasterCard logos, it says, "excluding costs." That is about the smallest print on the ad. But a careful potential client might be able to find that there could conceivably be a cost attached to this.

Frankly, I am not sure if this phrase means that costs are excluded and, therefore, you don't have to pay for these either, or if it means that costs are excluded from the exclusion, which means you do have to pay for them. A consumer of legal services should not be enticed by the prospect of free legal services, including what appears to be an exclusion of cost from the charges for which he is responsible.

As I will shortly describe, the amendment I am offering would help prevent people from being duped by incomplete and misleading representations such as these. Let me repeat that the scope of my amendment is not every court in America but only applies to Federal claims and Federal courts.

Shifting gears for a moment, we also hear stories of ambulance chasers who take advantage of grieving families when they are most vulnerable. For example, at the scene of a 1993 collision between two commuter trains in Gary, IN, witnesses reported seeing lawyers' business cards being passed around at the scene of the accident. And the injured were being videotaped as they were removed on stretchers.

After an August 1987 crash of a commercial airline flight in Detroit, a man posing as a Roman Catholic priest, Father John Irish, appeared at the scene to console families of the victims. He hugged crying mothers and talked with grieving fathers of God's rewards in the hereafter. Then he would hand them the business card of a Florida attorney, urging them to call the lawyer, and then the father would disappear.

We should make sure that misleading ads and shameless ambulance chasing do not occur. I propose a clients' bill of rights for consumers of legal services. We have talked a lot in recent years about a Patients' Bill of Rights to make sure patients are treated properly by health maintenance organizations. We need a clients' bill of rights to make sure consumers of legal services are treated fairly.

This clients' bill of rights would do two things. The first thing it would do is require consumers of legal services to receive basic information at the beginning, during the course, and at the end of the case so that all along the way the client, the consumer of legal services, has a clear understanding of what the financial relationship is between the lawyer and the client.

As the old saying goes: Knowledge is power. My amendment empowers consumers by giving them the knowledge they need to make informed decisions about their legal representation. As I pointed out earlier in one of my examples, there was a lady who had no earthly idea, because of not receiving proper information about the extent of the cost that could be involved in her case, that after getting a $25,000 settlement she would essentially get nothing. The lawyer then benevolently gave her $833.

So clients need information all along the way to make informed decisions about legal representation.

At the initial meeting before they are retained, under the McConnell amendment, attorneys would have to provide would-be clients with the following things—and this is not unreasonable; it's elementary justice—No. 1, the estimated number of hours that will be spent on the case; No. 2, the hourly fee or the contingent fee that will be charged; No. 3, very importantly, the probability of a suc-

cessful outcome; next, the estimated recovery reasonably expected; next, the estimated cost or expenses the plaintiffs will bear; and whether a client will be subject to fee arrangements with other lawyers.

This is elementary consumer protection. Let me say to my friends in the Senate who are close to and allied with the plaintiffs' lawyers in America: We are not talking about capping anybody's fees. This is not about capping fees. The fee arrangement could still be whatever astronomical amount the lawyer believes he can charge. But we are talking about providing basic information to the client so the client can understand what the fee arrangement is going to be. There are no fee caps in this amendment.

Monthly statements: My amendment would also require lawyers to provide their clients with monthly statements so that consumers of legal services will be informed on a regular basis of the basic progress of their case. Specifically, the lawyers would have to tell clients how much time they are expending on their case, what they are spending their time doing, and what expenses they are incurring in the case. Again, this is basic information clients should receive so they know how their case is progressing and how in essence their money is being spent.

Then an accounting at the end of the case: Clients should receive basic information at the end of the case so they know exactly what they paid for during their representation. To this end, my amendment provides that within 30 days after the end of the case, attorneys shall provide clients with the number of hours expended; the amount of expenses to be charged; the total hourly fee or the total contingency fee in a contingency fee case; the effective hourly fee charged, which would be determined by dividing the total contingency fee by the total number of hours expended.

Again, this is elementary, reasonable information, no fee caps, just providing reasonable information to the client at the end of the case so they can understand just what the legal services have provided.

Madam President, in the age of disclosure, I cannot believe that my colleagues would not support some basic disclosures that the first part of my amendment would provide. It does not limit—I say again—attorney's fees in any regard. There are no fee caps of any sort in this amendment. Frankly, I would like to see that. We have had fee caps under the Federal Tort Claims Act for years, and I am told there is no dearth of lawyers prepared to bring tort claims against the United States. But there are not any fee caps in this legislation. That is something a large number of Members of the Senate do not support. The first part of my amendment simply enables consumers of legal services to make informed choices.

The second thing my amendment does is establish a bereavement rule. A bereavement rule means the provision for a period of mourning, or a period of bereavement, during which lawyers would have to be respectful of injured victims or their families. As I mentioned, this provision is important because there are disturbing stories of ambulance-chasing lawyers who prey upon victims and their families when these people are the most vulnerable.

To address this problem, my amendment simply provides that there will be no unsolicited communication by lawyers to victims,

or to their families, regarding an action for personal injury, or wrongful death, for 45 days from the date of death or personal injury—just 45 days to give the victims, or their families, an opportunity to begin to get their feet back under them before they start considering which lawyer, if any, they want to retain to pursue the legal action to which they may be entitled.

Let me repeat. This amendment applies only to unsolicited communications. If the victims or their families are feeling like it 2 days after the event, they are certainly free to call whomever they choose. This only applies to unsolicited communications to victims or their families. Injured parties and their families are free to contact whomever they want whenever they want.

Madam President, there is precedent for this respectful, considerate principle in existing Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Let me say it again. There is precedent for a bereavement rule already in Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Just 2 years ago, in 2000, we extended this prohibition to 45 days from the date of an airline crash. That prohibition is codified at 49 U.S.C. section 1136(g)(2).

The point I am making here is that there is precedent in Federal law already for a bereavement rule, and this simply expands upon that preference and provides this protection for additional victims during a period of mourning.

Madam President, someone who has been killed or injured in a train crash or a shipping accident is just as dead, or just as injured, as someone who is killed or injured in an airline crash. These victims and their families deserve the same type of respect and consideration. All these types of victims and their families are in a vulnerable state where it is easy for them to be pressured or taken advantage of.

The second part of my amendment would afford victims of other tragedies the same protection that we afford victims of airline disasters. The language in my amendment that we used to do so is virtually identical to current Federal law. It would guarantee these people a reasonable period of time to grieve, collect their thoughts, and to think clearly about what action they want to take and who they want to take such action on their behalf.

As I said, there is current precedent for it in Federal law, and I hope my colleagues will support it, along with the disclosure provisions in my amendment.

Madam President, what is the time situation?

The PRESIDING OFFICER. The Senator has 20 minutes remaining.

Mr. MCCONNELL. Madam President, let me sum up what the McConnell amendment is. There are essentially two parts to it. First, it would require that lawyers provide to their clients all along the way, from initially being retained until the conclusion of the case, adequate consumer protection information so the clients will have a sense at every stage of the case how the case is moving along, what the likelihood of success is and, very importantly, what kind of costs the client may be incurring in the course of the litigation.

Secondly, we provide for a bereavement rule of 45 days to give the victims and their families an opportunity to get back on their feet during an atmosphere in which unsolicited efforts to retain these victims are put off. If, however, the family at any point during that 45-day period decides it is ready to move on and wants to look at its legal options, there is nothing in the amendment that would prevent the victim or victim's families from retaining a lawyer at any time. All this does is protect them from unwanted solicitations for a brief period of 45 days following the occurrence of the event.

As I pointed out, there is already precedent in Federal law for such a bereavement period of 45 days. That applies in the wake of airline disasters.

Finally, let me repeat this because I know this is something that is offensive to many Members of the Senate, particularly on the other side of the aisle. As much as I would like to see fee caps established, this amendment has no fee caps in it. Even though, under the Federal Tort Claims Act, since the late 1940s, we have had a fee cap of 25 percent in tort actions against the Federal Government, no such fee cap is in this amendment.

So I think this is a modest proposal to provide consumer protection to victims of accidents as they contemplate their futures and determine, first, which lawyer to hire, and after hiring the lawyer, have adequate information along the way to make sure they understand what the fee arrangement is.

I yield the floor and retain the remainder of my time and now urge—and I will also do so later—the Senate to adopt this amendment.

The PRESIDING OFFICER (Mrs. CLINTON). Who yields time?

Mr. SARBANES. Madam President, can I inquire as to what the allocation of time is? Let me make a parliamentary inquiry. I understand the vote on a motion to table that will be offered by Senator Enzi is scheduled to take place at 12:45.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. Can the Chair inform us as to the allocation of time from now until quarter to 1?

The PRESIDING OFFICER. The unanimous consent agreement provided that the time between the conclusion of Senator McConnell's remarks and the 12:45 p.m. vote will be evenly divided between Senators Gramm and Sarbanes, and Senator McConnell has a remaining amount of time of 16 minutes.

Mr. SARBANES. Sixteen minutes?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. Madam President, is it the Senator's thought we move up the vote?

Mr. SARBANES. Staff has made an announcement, and people have planned accordingly. I understand that is the situation on both sides of the aisle for that matter. It was announced earlier on. People, therefore, made plans accordingly.

The PRESIDING OFFICER. If Senator McConnell used all of his remaining time, each side would have approximately 10 minutes.

Mr. MCCONNELL. I say to my friend from Maryland, I will be happy to hear from the other side on the amendment. I am reluctant to yield back my time until I know the extent of the debate

in which we are going to engage. In any event, the vote, Madam President, occurs at quarter to 1?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. I retain the remainder of my time until such time we decide otherwise. I have not heard from the other side.

Mr. SARBANES. As I understand the agreement, I do not think others can use time until the Senator from Kentucky uses his time.

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. MCCONNELL. I suggest we divide the remainder of the time between now and the vote. Will that be acceptable?

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I ask unanimous consent that the remaining time between now and quarter of 1 be divided equally to the manager of the bill, to Senator Enzi, and to Senator McConnell. That will give us about 10 minutes each, I think.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland.

Mr. SARBANES. Madam President, I will speak briefly to the McConnell amendment which has been added as a second-degree amendment to the Edwards-Enzi amendment. Before I address that amendment itself, let me again indicate my very strong support for the underlying first-degree amendment, the Edwards-Enzi amendment, which was very carefully worked out and I believe represents a constructive suggestion. I am hopeful we can get to that amendment and have a vote on it sometime in the near future.

Obviously, the way things are now structured, we have to dispose of the McConnell second-degree amendment in order to get to the Edwards-Enzi amendment, but I think the Edwards-Enzi amendment warrants both the attention and the support of this body. I hope at some point we will be able to do that.

I am not going to address the substance of the McConnell amendment, or perhaps I will discuss it only in passing. I simply wish to observe that it is not relevant to this bill. It is talking about a client's bill of rights which may or may not be a worthy subject to examine.

How we regulate the lawyers is a complicated problem, obviously. It has mostly been done at the State level. The Senator from Kentucky has some sweeping proposals on a national basis, and they may warrant examination, but I certainly do not think they warrant coming into this debate on a very different issue. I do not know that there has been any study of it. I do not think this represents the recommendation or the report of any committee that is putting this forward, having undertaken an appropriate series of hearings in order to examine the subject. I have not had the benefit of testimony from the proponents and opponents. In fact, if the Senator from Kentucky will yield for a question, has a committee of the Senate recommended anything like this?

Mr. MCCONNELL. I say to my friend from Maryland, no committee of the Senate recommended the energy bill on which we spent 6 weeks in the Senate, and the majority leader has bypassed committees consistently throughout the last year. So I do not know that the Senate was constrained in any way——

Mr. SARBANES. It may be a response to say to me it was done somewhere else. I have a very specific question: Has a committee of the Senate recommended this proposal?

Mr. MCCONNELL. I would like to provide my own answer. If the Senator is asking for an answer from the Senator from Kentucky, I would like to be able to express myself, if that is OK with the Senator from Maryland.

Mr. SARBANES. The Senator from Kentucky is very skilled. I watched him on these television programs. I know he is very good when the question is put to him to give the answer he wants to give, even though it is not directed to the question. Obviously, I will have to go through that same experience on the floor of the Senate now.

Mr. MCCONNELL. I thank my friend from Maryland for his compliment and respond, as with many other bills over the last year that we dealt with on the floor of the Senate, it has not been reported by a committee. But many worthwhile ideas have been adopted and made a part of law that have been recommended by both Democratic and Republican Senators that, in the years my friend and I have been here, were not officially reported out of a committee.

Mr. SARBANES. Have any hearings been held on these proposals—the bereavement period and the fees proposal? Have hearings been held on those issues?

Mr. MCCONNELL. I am unaware of any hearings to that effect, but I ask my friend from Maryland why he thinks something as elementary as this, something as obviously as fair as this, and in the case of the bereavement rule, which we adopted in Federal law for families and victims of airline crashes, would not be an appropriate thing to do with or without hearings?

Mr. SARBANES. It seems to me there are complicated issues that are raised by Senator McConnell's proposal, and they certainly should have been preceded by hearings in which the pros and cons could have been carefully examined.

Madam President, I reiterate my point, this amendment is not relevant to the issue before us. It does not come to us on the basis of any hearings that back up or buttress the proposal. It has not worked through any committee. It certainly has not been recommended by any committee, and there have not even been any hearings, as I understand it, by any committee.

At the appropriate time, I will be very strongly supportive of the motion to table that will be offered by the able Senator from Wyoming. This is, of course, the second McConnell second-degree amendment we have had to deal with on this legislation.

I hope the Senator from Kentucky does not view this as a kind of fair hunting game to bring forth at each step along the way, whenever there is an opening for a second-degree amendment, whatever sort of pet project he has been harboring in his office for whatever period of time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I yield myself some of my time to respond to my friend from Maryland.

As I listened carefully to my friend from Maryland, he is straining to think of a good argument against this worthwhile amendment. It has been my experience over the years in the Senate that when we start saying there has been no committee action, there have been no hearings, we are having a hard time thinking of a good argument against the proposal on the merits.

So let me repeat again what the merits are. It seems to me we do not need committee hearings or committee action to convince us that a 45-day bereavement rule for victims and their families, which we have already adopted in Federal law for victims and families of plane crashes—we do not need committee action to tell us this is a fundamentally appropriate thing to do.

Do we need hearings and committee action to tell us that in Federal claims and in Federal cases it is appropriate and only right that lawyers provide information to their clients at the beginning, during, and at the end of their handling of the case as to the possible costs involved? That is what is before us, not the issue of whether or not we should have hearings on this or whether or not the committee should act. My goodness, we spent 6 weeks on an energy bill that the committee did not pass out of the Energy Committee. We do that frequently. The Senate is not known to be constrained by tight rules of germaneness, nor by official committee action.

So I urge my colleagues to look at the amendment itself, not these rather extraneous arguments seeking to divert our attention away from what the amendment itself provides, which is protections for consumers of legal services.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, on the energy analysis, I simply point out that the Energy Committee held extended hearings over a long period of time on the energy issue. Then, they did not actually evolve a bill, but they had a very full set of hearings and a lot of recommendations available to be included in an energy package.

On the other, I say to my colleague, I forbore from discussing the substance because I did not want to prejudice the Senator on some future occasion by having to go substantively into the weaknesses and deficiencies of the proposal that is before us. Since the time is limited and that would take quite a while to do, I intend to continue to do that out of a sense of consideration to my colleague because presumably, if this amendment is tabled, he will be back visiting with us on another day, perhaps on an appropriate vehicle. I do not know. One would have to wait and see whether that would be realized.

Out of some deference of respect for my friend from Kentucky, I simply thought I would not undertake to go into this point by point on the substance because it is really not appropriate. We ought to recognize that and go ahead and table the amendment, and maybe when it finally comes up in an appropriate context, we can then address its substantive weaknesses or strengths. Perhaps at that time it would have evolved into a different animal.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. ENZI. Madam President, I yield myself such time as I may consume. At 12:45, I will be making a motion to table the McConnell second-degree amendment to amendment No. 4200. We are working on a bill that I have spent hundreds of hours on, part of them in hearings, much of the time in drafting my own legislation, then working with Senator Gramm to come up with an even better bill, and then working with Senator Sarbanes to come up with the bill we have before us.

There is a crisis in the stock market. Two days ago, it dropped by 185 points. Yesterday, it dropped by 285 points. Some suggest that is because Congress is working on this issue and it is scaring the heck out of the people of the United States. I hope that is not the case. I hope it is a sign that they do want to have a solution, and they want to have a solution quickly. We do have the solution that, combined with the House bill, can serve the purpose of restoring the confidence of American investors.

The McConnell amendment is a clients' bill of rights to reform the way attorneys treat their clients. It is not about securities and exchange. It is all about attorneys. Senator Edwards and I modified our amendment so it applies only to action before the Securities and Exchange Commission. That was so that if this debate draws out with multiple second-degree amendments well beyond the time we have the cloture vote, our amendment will still be germane.

A standard that the Senator from Texas, Mr. Gramm, has put on amendments is that they be germane. He did an extensive speech last night about the need to do germane amendments and get this finished.

This amendment is good and well intended. It requires attorneys to do a number of things in representing those who put their trust in attorneys' hands, and this includes requiring attorneys to provide written disclosure to their clients on the number of hours that will be spent on their case, the attorney's hourly or contingent fee, the probability of successful outcome, estimated recovery of costs, and bereavement.

Under normal circumstances, I probably would be very excited about this bill. The reason I am opposing it is simply because it does not have anyplace in the accounting reform bill that we are debating today. I realize it does not change anything in my amendment. It is not a substitute amendment, but it is an addition that will cause problems further down the road. It will delay actually getting accounting reform into place. The accounting reform bill is being used as a vehicle to provide a free ride for a nongermane, unrelated amendment. I will probably use that same line again on a number of other amendments that come up later—it is nongermane.

The McConnell amendment needs to hitchhike on a different road with a different vehicle at a different time.

Over several months, I and my esteemed colleagues on both sides of this aisle have worked hard on the accounting reform bill. We have worked hard to keep out surplus, nonrelevant issues so we can get through the process of getting accounting legislation through in a timely fashion and in a bipartisan manner. We have been very successful at keeping out exact amendments even that

deal with how to do accounting and have set up a process where people who are knowledgeable on that can figure out the right way to do it and the right way to do it faster than before.

I strongly believe this bill cannot afford to be held up any longer just for Members on both sides of the aisle to score political points on hot button issues. A lot of us have pet projects and issues we would have liked to add on, but we resisted and we encouraged our colleagues on the Banking Committee to do the same thing.

We are now in the amendment process, but amendments should be germane to the contents of the underlying bill and amendment. That is not a requirement until after cloture, but we need to get the bill done. There is no reason we even need to go to cloture if we would get the germane amendments done and get this into a conference committee so we can get the work done.

The McConnell second-degree amendment, while well intended, is not germane. It does not deal solely with securities laws or those attorneys appearing and practicing before the SEC. It does not deal solely with attorneys working for publicly traded companies but to any attorney and any client practicing any form of Federal law. It does not deal with an attorney's professional responsibilities of reporting Federal securities law violations to its corporate client. It is much broader than the underlying amendment which does deal strictly with Federal securities laws, attorneys appearing and practicing before the SEC, and internal reporting by an attorney within a publicly traded company.

In addition, the McConnell amendment is going to require study and debate, meaning more time spent diverting passage of the much needed accounting reform bill. We are running out of time before the next recess and have several important bills yet to consider, including Homeland Security Department legislation.

While the McConnell amendment is well intended, the timing is simply wrong. I respect my colleague from Kentucky and his constant support and earnest effort to make attorneys play it straight with their clients. But I must respectfully oppose this amendment at this time. I hope we will be able to debate and vote on it on another day. When the time is appropriate under the agreement, I will make a motion to table the amendment.

I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, let me say first with regard to whether this is appropriate to be added to this bill, the ranking member of the Banking Committee, the manager of the bill on this side, supports my amendment. Obviously, it is not his view that this is in any way inappropriate for this legislation.

I also say to my good friend from Wyoming, this will not slow down the bill. This amendment will be voted on at 12:45. There is a time agreement on it. We certainly are not in any way trying to slow down the passage of the underlying bill which I fully expect to support.

The issue is whether we are only interested in corporate defense counsel misbehavior. Why are we only interested in corporate defense counsel misbehavior? My amendment applies to the other side, the plaintiff's side. It would apply to cases, for example, brought under the Federal Employers Liability Act, which governs

injury and wrongful death actions against railroads in interstate commerce by railroad workers and their families. It would apply to cases brought under the Longshore and Harbor Workers Compensation Act, which establishes no-fault compensation for employees injured on navigable rivers. And it would apply to plaintiffs bringing action under the Price Anderson Act amendments of 1998, which creates a Federal cause of action for nuclear accidents. It would also apply to the Federal Tort Claims Act, which creates Federal causes of action for tort claims against the U.S. Government. It would apply to lawyers representing clients bringing cases under the Public Health Service Act, which are suits against certain Federally supported health centers and their employees brought under the Federal Tort Claims Act. And finally, it would apply to lawyers representing clients bringing actions under part of Federal law, very important in my State, the Black Lung Benefits Act of 1972, which establishes a compensation scheme for coal miners allegedly suffering from blank lung disease and survivors of miners who died from or were totally disabled by the disease.

Let me sum it up again: it is not my intent to slow the bill down. This amendment will be voted on at 12:45, so it clearly is not slowing anything down. It seems to me entirely consistent with the underlying amendment dealing with corporate defense counsel misbehavior to also address the question of a plaintiff's lawyer's misbehavior.

Beyond that, we are talking simply about providing consumers of legal services with basic information, at the beginning, during, and at the end of a lawsuit, and a modest 45-day bereavement rule giving the victims and their families a chance to get back on their feet before they are contacted by lawyers seeking to represent them in court. It would not in any way prevent families from contacting a lawyer during that time but would protect them from unwarranted solicitation of legal services for a mere 45 days.

This is a very modest proposal. I would love to go a lot further. I like the fee caps in the Federal Tort Claims Act. That is not what we have offered. That is not what I offered. There is no impact on fees, no caps on damages. This is strictly consumer protection in the area of legal services. It is a very modest proposal which I hope the Senate will adopt when we vote on it at 12:45.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I will give a little explanation for the point raised that this particular bill—because a time has been set for the vote—will not hold things up. There are about 60 amendments out there; there are probably 10 that actually deal with what is in the bill. There has to be some point where we have to ask, can we not concentrate on what is in the bill instead of bringing up the other things? I am sorry that yours is the bill on which we are starting that.

Mr. MCCONNELL. Will the Senator yield?

Mr. ENZI. Sure.

Mr. MCCONNELL. It was my understanding that cloture was filed last night. Would my friend from Wyoming not agree, that cloture vote brings the bill to a conclusion? I am not in any way trying to

delay the passage of the bill. I support the underlying bill. I believe my amendment is appropriate to be considered.

Mr. SARBANES. Will the Senator yield?

Mr. ENZI. Yes.

Mr. SARBANES. Actually, I will use my own time, and the Senator may reserve his time.

We must table this amendment. Otherwise, it becomes an invitation for others to come in and offer second-degree amendments that are not relevant to the bill. This amendment is not relevant to the bill—nowhere close. If we start this process now, opening up the bill to these nonrelevant amendments, what will happen to the relevant amendments, some of which are germane under cloture and others of which might miss the tight test of germaneness but are relevant material, which are pending, which other colleagues have offered, if they want to get to those amendments?

We could have done the Edwards amendment yesterday and moved on to something else, but we came in with a second-degree amendment, not relevant—not only not relevant to the Edwards amendment, not relevant to the bill.

Frankly, we are well beyond the point where we at least ought to set aside amendments that have no relevance to the underlying legislation.

Mr. MCCONNELL. Will the Senator yield?

Mr. SARBANES. Certainly, I yield.

Mr. MCCONNELL. I ask my friend from Maryland, if he believes my amendment may have some merit, whether he would support taking it up as a freestanding measure with a time agreement.

Mr. SARBANES. No, I would not support that.

Mr. MCCONNELL. I thank the Senator.

Mr. SARBANES. Why would I support a request like that? Surely the Senator from Kentucky is just making a joke on the floor of the Senate by making that inquiry. That must be apparent to all. I appreciate the Senator's sense of humor in that regard. I also appreciate his indication, just a moment or two ago, he intends to support the underlying bill. Of course, we are gratified to hear that.

I yield the floor and reserve whatever time I may have left.

What is the time situation?

The PRESIDING OFFICER. The Senator has 33 seconds, Senator McConnell has 4 minutes 38 seconds, and the Senator from Wyoming has 3 minutes.

Who yields time?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. It was my understanding that Senator Santorum was on the way. But if he has not arrived yet, I suppose the best thing to do would be to enter a quorum call knowing full well my time is running.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I will alert Members we are going to have a vote later. The two members of the Appropriations Com-

mittee have finally gotten a meeting with the House appropriators on the supplemental appropriations bill. I think it would be in everyone's best interest that they are allowed to go forward with that most important meeting.

We received a request from the chairman of the Appropriations Committee, Senator Byrd. Therefore, I ask unanimous consent that the order that is now in effect be modified and that Senator Enzi would be recognized at 2 p.m. to move to table the amendment, and that 8 minutes prior to that would be devoted to debate between the two managers of the bill, Senator Sarbanes and Senator Gramm, and that Senator Enzi would be recognized for 2 minutes, and Senator McConnell for 2 minutes—a total of 8 minutes. All other provisions of the unanimous consent agreement now in effect would remain the way they are.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, the vote will occur at 2 o'clock today. In the meantime, I ask there be a period from now until then for morning business, with the time equally divided between Senator Daschle or his designee or Senator Lott or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum, and I ask the time be charged equally between Senator Daschle and Senator Lott.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, THURSDAY, JULY 11, 2002, NUMBER 93,
PAGES [S6620–S6633]

Public Company Accounting Reform and Investor Protection Act of 2002—Continued

AMENDMENT NO. 4200

The PRESIDING OFFICER (Mr. CARPER). The question is on agreeing to the motion to table amendment No. 4200. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), the Senator from Ohio (Mr. Voinovich), and the Senator from Idaho (Mr. Crapo) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "no."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 35, as follows:

(Rollcall Vote No. 172 Leg.)

Yeas—62: Akaka, Allen, Baucus, Bayh, Biden, Bingaman, Boxer, Breaux, Byrd, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Collins, Conrad, Corzine, Daschle, Dayton, Dodd, Dorgan, Durbin, Edwards, Enzi, Feingold, Feinstein, Graham, Hagel, Harkin, Hollings, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Landrieu, Leahy, Levin, Lieberman, Lincoln, McCain, Mikulski, Miller, Murray, Nelson (FL), Nelson (NE), Reed, Reid, Rockefeller, Sarbanes, Schumer, Shelby, Snowe, Specter, Stabenow, Thompson, Torricelli, Warner, Wellstone, Wyden

Nays—35: Allard, Bennett, Bond, Brownback, Bunning, Burns, Campbell, Cochran, Craig, DeWine, Domenici, Ensign, Fitzgerald, Frist, Gramm, Grassley, Gregg, Hatch, Hutchinson, Hutchison, Inhofe, Kyl, Lott, Lugar, McConnell, Murkowski, Nickles, Roberts, Santorum, Sessions, Smith (NH), Smith (OR), Stevens, Thomas, Thurmond

Not Voting—3: Crapo, Helms, Voinovich

The motion was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 4269 TO AMENDMENT NO. 4187

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining fi-

nancial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. DASCHLE. Mr. President, I have an amendment I send to the desk on behalf of Senator Levin.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. Daschle], for Mr. Levin, for himself, Mr. Nelson of Florida, Mr. Harkin, Mr. Corzine, and Mr. Biden, proposes an amendment numbered 4269.

Mr. DASCHLE. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this amendment is offered—and I thank the majority leader—on behalf of myself, Senator Bill Nelson, Senator Harkin, Senator Corzine, and Senator Biden.

Our amendment would grant the SEC administrative authority to impose civil fines on persons who violate securities laws, regulations, and rules. Now the SEC has to go to court, which is difficult and burdensome.

We, just the other day, decided we wanted to give the SEC the power to remove directors and officers from public companies who violate rules and regulations and laws without having to go to court.

Of course, those decisions administratively by the SEC are subject to an appeal. That is always true and always must be true. The same approach is essential relative to the imposition of civil fines. If the SEC is going to have power, without a lot of cumbersome, costly, and expensive procedures, to really take on those directors and those auditors who violate the law, who violate rules and regulations, the SEC must have the same authority which other regulatory bodies have to impose civil fines.

A few examples: The Commodity Futures Trading Commission has authority to impose civil fines up to three times the monetary gain from a violation plus restitution of customer damages. The Department of Transportation can impose civil fines. The Consumer Product Safety Commission can impose civil fines. The Occupational Safety and Health Administration, OSHA, can impose civil fines. The Federal Communications Commission can impose civil fines.

As a matter of fact, the Securities and Exchange Commission can impose civil fines on some of the people it regulates—brokers. But unless we act today, there will be a great gap in the enforcement power of the SEC, a continuing gap. That gap is, it does not have the power, without legislation, to impose an administrative civil fine on auditors and members of boards of directors who violate rules and regulations in the law of the land.

Our amendment would give the SEC that authority to impose administratively civil fines on those people who violate our securities laws and regulations and rules. That includes officers, directors, and auditors of publicly traded companies.

I emphasize, these fines would be, and must be, subject to judicial review, as are the other SEC administrative determinations which they have authority to answer at this point. That is the first objective of the amendment.

Secondly, our amendment would significantly increase the civil fines the SEC can impose on law violators. I particularly thank Senator Nelson of Florida for highlighting the problem and supporting the inclusion of these provisions in the amendment.

The civil fines that currently can be imposed on broker-dealers administratively have maximum amounts that start at $6,500 per violation. That is the maximum amount under the so-called tier 1 civil fine. If a broker-dealer now violates the securities laws under so-called tier 1 where there is a violation found, not yet proven to be fraudulent but a violation nonetheless, $6,500 is the maximum fine under current law. Tier 2 for individuals is a $60,000 fine. That is where you find fraud, deceit, manipulation, and deliberate or reckless disregard—$60,000 for an individual for that violation.

It is laughable. The current structure of fines which can be imposed on those people who administratively can be subject to a civil action or civil fine by the SEC is so low, these fines are a joke. We are talking about people who frequently are walking away, lining their pockets, violating rules and regulations for millions of dollars, sometimes tens of millions of dollars. To have a system where the maximum fine under tier 1 is $6,500 for an individual and under tier 2 is $60,000 is just simply inadequate.

Here is what the SEC staff said in June of this year: The current maximum penalty amounts may not have the desired deterrent effect on an individual or a corporate violator. For example, an individual who commits a negligent act is subject to a maximum penalty of $6,500 per violation.

This is the conclusion of the SEC staff: The amount is so trivial that it cannot possibly have a deterrent effect on the violator.

I would say that is an understatement: $6,500, given the current amount of money flowing through these violations of rules and regulations, is pitifully trivial. In fact, it is no deterrent at all. It might as well not be there. If we are going to have a deterrent system, we have to have fines which have some bite, which are real, which have an impact on people.

We would, under our amendment, increase the maximum fines from a range of $6,500 to $600,000, which is the current range for tiers 1 through 3, to a range which goes from $100,000 to $5 million in fines per violation.

We are seeing these corporate restatements and misconduct involving $2 billion, $4 billion, and even $12 billion. These new fine amounts are critical if they are to have the desired deterrent and punitive effects on wrongdoers in the corporate world.

Our bill also has language which is similar to the language in the Leahy and Lott amendments that were adopted relative to the removal from office. We do this for the sake of completeness, so that we can lay out the entire structure being proposed in our bill for administratively imposed civil fines. That part of the amendment is the same as the removal from office provisions adopted by the Senate yesterday in the Leahy and Lott amendments.

Finally, our amendment would grant the SEC new administrative authority, when the SEC has opened an official investigation, to subpoena financial records from a financial institution without having to notify the subject that such a records request has been made. This authority would allow the SEC to evaluate financial transactions, to trace funds, to analyze relationships, without having to alert the subject of the investigation to the SEC's action.

Under current law, the SEC either has to give the subject advance notice of the subpoena or to obtain a court order that can delay notification for no longer than 90 days. That is a huge impediment to enforcement by the SEC. We ought to change that.

The staff of the SEC wrote the following relative to this amendment:

> This amendment would enhance the Commission's ability to trace money and relationships quickly and effectively. The Commission typically requests bank records when it has reason to suspect possible relationships between persons or entities and that passage of money between those persons or entities may be relevant to violations of the securities laws. Identifying those relationships and quickly identifying assets obtained or transferred in connection with possible unlawful activity is critical to the Commission's ability to obtain orders freezing assets and other appropriate relief.
>
> In many situations, the Commission could proceed much more effectively if it could obtain relevant bank records without providing notice to the persons whose account records are sought.
>
> Under current law, however—

The SEC staff wrote—

> the right to the Financial Privacy Act generally requires the commission to provide those persons with notice and a substantial period—10 to 14 days—in which to file a contest to the commission's authority to obtain the records.

Let me continue with the SEC staff analysis of this language that is in our bill:

> Because Congress recognized that the notice requirement can, in some cases, compromise important and legitimate commission investigative objectives, Congress provided in section 21(h) of the Exchange Act that the commission may seek court authorization to obtain relevant bank records without notifying the customer for at least 90 days. Unfortunately——

The SEC staff wrote—

> those important investigative objectives are also compromised by the inherent delay in obtaining the necessary court order.
>
> The proposed amendment to section 21(h)——

Our language in this amendment—

> addresses both the notice and delay problem by allowing the commission the discretion only in those cases in which it has already authorized a formal investigation to proceed without notice to the customer. The proposed amendment also reiterates and strengthens the commission's authority to require that financial institutions not compromise investigations by notifying any persons or entities that their bank records have been subpoenaed.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. LEVIN. I will be happy to yield for a question, but I do have an additional thought.

Mr. NELSON of Florida. I am proud to be here today with my colleague from Michigan to offer these reforms aimed at preventing and punishing perpetrators of corporate fraud. The questions I wanted to ask the very distinguished Senator from Michigan, who has the foresight of why we need this at this particular time, are these: Would it not intrigue the Senator from Michigan and other

Senators here that all of this is happening in an environment when 17,000 workers at WorldCom have received pink slips and have realized losses of over a billion dollars in their retirement plans; and at the same time they were receiving pink slips, the corporate executives were attending a retreat in Hawaii? That would not surprise the Senator, would it?

Mr. LEVIN. It would not surprise me at all.

Mr. NELSON of Florida. I doubt that it would surprise the Senator that one of those executives, by the way, was putting the finishing touches on a $15 million mansion, derived from that money from WorldCom. Would it surprise the Senator that late last year Global Crossing laid off 1,200 people, giving them no severance package, while the CEO of that company walked away with hundreds of millions of dollars?

Mr. LEVIN. I am afraid very little would surprise me about some of these violations and deceptions these days.

Mr. NELSON of Florida. I know it would not surprise the Senator, but I will ask him this anyway. After what went on with Enron last summer, while Enron executives were selling their shares for hundreds of millions of dollars and protecting their portfolios, their retirees and employees lost more than a billion dollars in retirement savings. Does that surprise the Senator?

Mr. LEVIN. Tragically, it is not a surprise.

Mr. NELSON of Florida. It is unconscionable. One of those we had testify in our Commerce Committee was Janice Farmer, an Enron retiree who lost her entire life savings that she had built up in a retirement plan from Enron. In her case, it was $700,000. She has nothing now.

And then, I suppose it also would not surprise the distinguished Senator that, while we are talking about these excesses of corporate irresponsibility and corporate greed, the Florida pension fund for the Florida retirement system had a loss of $335 million—more losses than any other State—from Enron stock purchases, and that the money managers of that Florida pension fund, which covers all of the public sector retirees in Florida—the money managers kept buying Enron stock, based on the assertions from the company's management that everything was OK, that doesn't surprise us either, does it?

Mr. LEVIN. No surprise. I am afraid that the public, having lost so much of its pension money, is disgusted but no longer surprised.

Mr. NELSON of Florida. The management said everything was OK, but it was not OK. While the stock was dropping like a rock, but not before the company's management had unloaded their shares, the money managers were buying that stock as it dropped like a rock, and it caused to a dozen or so pension funds, retirement systems, public pension funds in this country over a billion dollars in losses. My State had the most losses of $335 million.

So we have seen in the last year and a half corporate abuses of monumental proportions, and it is time for us to stop it. I am grateful to the Senator from Michigan for his leadership in bringing forth the amendment that he has described, which is basically going to give some additional teeth to the Securities and Exchange Commission to cause disclosure and to cause some hurt when these

corporate managers, motivated and operated by greed, cross the line.

I thank the Senator for his leadership.

Mr. LEVIN. I very much thank the Senator from Florida for his comments and his questions, and also for the active role he has taken in shaping this language. He has identified the feeble nature of the fine structure that we have in the current law. We have some ruthless people out there who have lined their own pockets in violation not only of law and regulation, but of any code of morality and fiduciary duty. We have some ruthless people.

We also have some toothless laws. The SEC, when it has to go to court to impose a civil fine, is put through hoops that other regulatory agencies are not put through. They can impose civil fines administratively—always subject to an appeal by the respondent or the defendant. But they have the capability to seek civil fines administratively—these other agencies. I have given examples of some of them. But when it comes to the SEC—outside of the brokers, where the SEC has that power—they have to go through the cumbersome proceedings of going to court.

Now, we have cured some of this already in the bill. When it comes to the removal from office, yesterday we took action to give the SEC the ability to act administratively and to order the removal of directors or executives from office. What we didn't do yet, and what this amendment does, is add a critical component to regulatory effectiveness, which is the ability to impose civil fines administratively.

This is what the Administration said in supporting the grant to the SEC of the power to remove directors from office, which we have now already done. It says that if we didn't do that—and now I am quoting the Statement of Administration Policy:

> It would continue to require the SEC to expand significant time and resources in order to attempt to gain similar relief in the Federal courts.

That is what we are talking about now with civil fines.

If we do not adopt this amendment, if we do not give the SEC these enforcement tools that other agencies have relative to directors and auditors, we will be requiring the SEC to be wasting time and wasting resources that they otherwise should be using to chase these corrupt and immoral people.

Mr. NELSON of Florida. Will the Senator yield for another question?

Mr. LEVIN. I will be happy to yield.

Mr. NELSON of Florida. The distinguished Senator from Michigan has laid out how this amendment will give stronger enforcement measures to the Securities and Exchange Commission. We have a saying in the South: It is beyond me. It is beyond me why there are other people in this Chamber, when confronted with such corporate and auditor misconduct, would not want to strengthen the law to prevent and punish such corporate abuse.

Does the senior Senator from Michigan have any idea why people would oppose us trying to strengthen existing law and, indeed, strengthen the underlying bill?

Mr. LEVIN. I am hopeful there will be broad support for this amendment, just for the reason the Senator from Florida gives. There should be. This is not novel. This capability of imposing civil

fines administratively belongs to other regulatory agencies. The protection is always an appeal to the court, but without this tool, the SEC has a weaker capability. They are not in a position then to do what other enforcement agencies can do in the face of some of the worst deception this country has ever seen—the deception which is now unfolding in too much of corporate America.

This is of the worst attack on our system we have seen. It is unfolding in front of our eyes, and the SEC should be given the powers to deter it or punish it—all the power.

We want the court to be able to review administrative actions. I think most Members of this body do not want any administrative agency to be able to act without court review if they are excessive or if they are wrong. I think most of us believe in that. I believe in that. But I also believe an administrative agency has to have enforcement tools.

We have given the SEC some additional tools in the last few days. Senator Leahy and Senator Lott, for instance, in the criminal law area, toughened the criminal penalties, and the SEC now has the capability to impose fines against the stockbroker, although they are pitifully small.

Our amendment would include directors, corporate executives, and auditors in the purview of the SEC power to act administratively and would toughen the fines so they would be far more realistic and could have some deterrent effect. The current fine structure against a limited class of people is useless; it is toothless.

This is a huge gap in the bill before us. This is a terrific bill, by the way, and I do not want anything I say to suggest otherwise. The Banking Committee has given the Senate, and hopefully the country—if we can get some support for it from the Administration and if it can get through conference—the Banking Committee has come up with a very strong law. We have strengthened it so far on the floor.

This amendment will strengthen it further by filling a gap that exists in the toolbox. It is the missing tool in the toolbox of enforcement capabilities that the SEC should have.

Mr. NELSON of Florida. The Senator's timing is just uncanny. We need look back no further than to yesterday when the stock market dropped almost 300 points, all the way down close to 8,800, the stock market being a reflection of the confidence of the American people in their investments in public corporations. Lo and behold, that confidence is sinking, and the American people need some greater sense of confidence that, indeed, they will not be hoodwinked, that they will not be fooled by greedy corporate executives or greedy auditors who blur the lines on what their auditing duties ought to be and instead get in bed with those who would mismanage the finances of a corporation. The people of America who invest their hard-earned dollars ought to have the confidence that when they see the financial reports, those financial reports are accurate. That confidence is not there, and we saw it yesterday in the reaction of the people in their purchases and sales in the stock market.

I thank the Senator from Michigan for his timeliness in trying to put some teeth in the authority of the Securities and Exchange Commission to give greater confidence to the Joe and Jane Citizen

of America who invest their money because they want to invest in the future of their country and they need to do it and know they are getting accurate figures. I thank the Senator.

Mr. LEVIN. I thank the Senator from Florida.

Mr. President, I wish to expand for one moment on the question of the notice provision in our amendment.

As I indicated before, where there are allegations that officers, directors of companies are misusing the accounting rules and abusing their powers, the SEC has to be able to look at financial records without giving the account holder an opportunity to move funds or to change accounts or to further muddy the investigative waters. Other agencies have that power, and this agency must have that power.

We have carefully circumscribed that power in a number of ways. We have not just simply said you can subpoena any documents you want. We have criteria for doing that or else they have to give notice.

One of the criteria is that it has to be an official investigation that has been ordered by the Commission. That is an important safeguard. This is not just the beginning of an investigation. This is not during a discovery process. This is where the Securities and Exchange Commission has initiated an official investigation, which is a very formal act on the part of the Securities and Exchange Commission.

At that point, they should be able to subpoena documents under certain circumstances. These are the circumstances that we set forth in the amendment:

If the Commission so directs in its subpoena, no financial institution or officer, director, partner, employee, shareholder, representative or agent can directly or indirectly disclose that records have been requested or provided in accordance with subparagraph (A).

In other words, you cannot disclose to the subject of the investigation that you, as a financial institution, have been subpoenaed for those records if the Commission finds reason to believe that such disclosure may—and then we set forth the rules, and the rules are intended to make sure that the Commission can act after it has announced or determined there should be an official investigation but does not want to risk that the subject of the investigation is going to remove documents or remove money or hide assets.

So we set forth the protections, and they are: If the Commission finds reason to believe that disclosing the fact of the official investigation to the subject of that investigation by a financial institution would, one, result in the transfer of assets or records outside of the territorial limits of the United States. So if the Commission says, hey, we have reason to believe if that person is notified in advance of those records being obtained by us or if there is a delay in our obtaining records that person may transfer assets or records outside of the United States, there could be nondisclosure.

The second criteria which, if it exists, would permit this to happen is if the disclosure would result in improper conversion of investor assets.

The third cause for the requirement that there be nondisclosure is that if such disclosure would impede the ability of the Commis-

sion to identify, trace, or freeze funds involved in any securities transaction. That speaks for itself.

The fourth way in which nondisclosure would be permitted is that if it endangers the life or physical safety of an individual. If the Commission has reason to believe the life or physical safety of an individual would be compromised by disclosure, surely we ought to not require disclosure.

Fifth, if it results in flight from prosecution, if they have reason to believe that could happen, or if the Commission has reason to believe that the disclosure may result in destruction of or tampering with evidence, or if such disclosure may result in intimidation of potential witnesses or otherwise seriously jeopardize an investigation or unduly delay a trial.

Those are carefully set forth reasons for why disclosure should not be required. These are similar to what other agencies have in terms of powers, and it seems to me with this careful delineation of this subpoena power that we should surely give the Securities and Exchange Commission that power.

Again, staff has given the reasons for the importance of that amendment, and I hope that reasoning of the SEC staff would be persuasive on this body. We have to give the SEC some administrative authority to impose civil fines. It would provide a tool that is now missing from the toolbox. It would add this tool, this weapon, to their arsenal. Without this weapon in their arsenal, they still have one hand tied behind their back. Without this amendment, they do not have the same administrative authority that other agencies have.

Given the environment we are in, that we must use all legitimate means to put an end to the abuses and the deceptions of too many of our corporate leaders, corporate executives, corporate directors, and auditors, we must surely bring our laws up to date in terms of the powers we give to the SEC, and in terms of the civil fines we authorize them to impose, always subject to an appeal to the courts.

I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Texas.

Mr. GRAMM. Mr. President, some of my colleagues change positions on issues like privacy so quickly that it gives me whiplash, and I will get to that point. I do not know how many people have seen the movie “Minority Report.” If you have not, I want to tell you the story. I never thought I would see a real-life example of what happens in this movie, but I have found one right here on the floor of the Senate.

In the movie “Minority Report,” you have a cop who has almost supernatural powers, and his job is to arrest people before they commit a crime. It starts with three people, two guys who naturally do not have very much ESP, and then you have this lady, who naturally is quite attractive, who has these massive powers of ESP. They visualize crimes that are going to happen, their brain waves activate a computer, and then it prints out what they are seeing. They see crimes happening that have not yet occurred.

The action in the movie begins with a guy finding his wife in bed with another man. The husband is obviously a nice guy—probably an accountant—and he is leaving his house. His wife seems so

eager for him to leave, he figures out something is going on. He is sort of an old, balding fellow and as he is leaving, he misses his bus. While he is waiting for the next bus, a young guy comes in and walks in his front door. Needless to say, the husband is upset about it. (Who wouldn't be upset about it? No one would want that to happen to them or anybody they knew.) So the husband goes in and he is sort of in shock. He finds himself in the bedroom, sitting by the bed. He goes crazy, and picks up a pair of scissors.

At this point, the computer system (hooked up to the people with ESP) alerts this superwarrior for law enforcement that there is about to be a murder. He jumps in this sort of minijet that flies fast and stops on a dime. The officer zooms in—have you seen this movie, Senator McCain?—and just as the guy is getting ready to stab his wife, the officer grabs the knife, puts the handcuffs on the husband, takes him off and they put him in prison for murder.

Mr. MCCAIN. Will the Senator yield? That is a better description than the movie was.

Mr. GRAMM. Now, I thought, the whole thing is sort of a moral question: Were these people really going to commit these crimes? They put them in prison for life. They put them in these metal cylinders and wired them up to control their brain waves. It is not very pleasant. So the question is, do you have a right to do this to people who have not yet committed a crime simply because some person with extrasensory perception said it was going to happen?

That is what the movie is about. It is a big hit movie. It made over $100 million the first week. It sounds silly when I tell it, but they got $100 million and I am giving this speech.

In any case, I thought, what an absurd plot. Who in the world could ever believe—this is the U.S. of A, by the way. This movie is off in the future.

Why would we ever have a law under which people can be punished for what they might do? Is that absurd? Can anybody believe that would happen? If you think not, you are wrong.

Let me read from this amendment. This is in general. It is talking about authority of the Commission to assess monetary penalties. This is from the amendment that is pending.

> In general, in any cease and desist proceedings under subsection A, the commission may impose a civil monetary penalty if it finds on the record, after notice and opportunity of hearing, that a person is violating, has violated, or is about to violate or has been or will be the cause of violation.

Senator Levin is going to fine people because we are concluding that they are about to do something before they have done it. Or that they "will be" the cause of a violation.

I submit, first of all, this is not from the SEC. The SEC has not asked for this provision. This is from staff at the SEC—maybe "a" staff person, for all I know.

The point is, do we really want to say we are going to penalize people because they are about to violate the law or we believe they are going to? How can you tell? How are you going to tell that they will be the cause of a violation? I submit that is a standard I am unaware has ever existed. If so, I didn't know about it or I would have tried to change it.

Let me mention a second problem. The second problem has to do with financial records. Correct me, my colleague on the Banking

Committee, if somehow I have fallen into a time warp and am in a different world than last year. Was it not last year we were going to shut down the Internet, we were going to put people in prison for putting out your mailing address or for mailing you a letter where someone could read your address off of it and go murder you? Were we not just in this time warp where privacy was the be-all and end-all of society?

I get whiplash, we change positions so often.

Let me state what the current law is and then read what Senator Levin is proposing. The current law is the following: The SEC and other Federal agencies have the power to get your financial records, and they can do it through administrative subpoena or judicial subpoena.

Now, normally there is one little inconvenience. Normally, they have to tell you they have taken your financial records. Not an unreasonable thing, it would seem to me, if this is still America. But we are talking about business people here, and there is a different standard. Two consenting adults can engage in any activity other than commerce, with full constitutional protection, but if they engage in job creation or wealth creation, they stand naked before the world in terms of any rights whatever.

Under current law, the Government can come in and take your financial records, but they have to tell you they have done it—"except." And there are three reasons they can do it without telling you. I think we all would say they make reasonably good sense. They can not tell you if they have reason to believe that there is going to be a flight from prosecution; or if they believe there is going to be destruction of or tampering with evidence; or if telling you would otherwise seriously jeopardize an investigation of official proceedings, or unduly delay a trial of an ongoing official process.

That is the current law. What is unreasonable about that? If the Government believes someone is doing something wrong, they can come in and take their records. Unless they believe there is going to be a flight from prosecution or there will be tampering with evidence or it will jeopardize the investigation, they have to tell you they took the records. That is not unreasonable. But if they believe any of these things to be the case, they can go in and take your records and not tell you.

Now, what does the amendment of the Senator from Michigan do? It says notwithstanding—that is always dangerous—notwithstanding sections 1105 or 1107 of the Right To Financial Privacy Act of 1978—that law has been around here a long time. But notwithstanding it, which means throw it out, the Commission may obtain access to and copies of or information contained in financial records of any person held by a financial institution, including financial records of a customer, without notice to that person.

If you think someone is going to flee prosecution or destroy evidence or that will jeopardize an ongoing investigation, maybe we would accept the limits of our individual liberty. But under the Levin amendment, you don't have to find any of those things. The government doesn't have to find that any of those circumstances is the case to be able to go in and take financial records.

Since this bill is a bill that amends our securities laws and our financial laws, this bill falls under this jurisdiction. So what this

literally means is that a government agency, without ever going to the courthouse, could come and take all of your financial records—your banking records, your investment records, any financial records you have or have ever had—and without finding that there is any risk that you are going to flee from justice or destroy evidence or jeopardize an investigation, they can take them and not tell you about it.

There is a limit, it seems to me, to the logic in this case. If the Senator had an amendment that simply raised these fines for people who are criminals, that would be an amendment I could support. It shows how far we have flown from reality when we are talking about penalizing people because they are "about" to violate the law; or that "will be" the cause of a violation.

It is very hard to know when someone is going to violate the law. I have not yet gotten any kickback, I am not a stockholder even, I don't think I have received a contribution from the PAC of the people who made the movie I've described—though if they had any decency, they would have contributed to my campaign over the years. But if you watch this movie, you are going to see what the problem with the Levin amendment is.

The problem with the Levin amendment, as it turns out, is these psychics are not always right, and they don't always agree. Sometimes there is a "Minority Report." The superwarrior cop discovers this. It turns out they try to frame him for a murder. A good movie. I recommend seeing it.

In any case, I am opposed to this amendment. It is a thick amendment. There are a lot of things in it. There are some things in it that I support. But I do not support penalizing people for what you think they are going to do. I do not support taking people's financial records without telling them about it. It sounds to me as if somebody at the SEC has got the idea that maybe they are living in a different era in a different country and they are saying: Look, if we didn't have to fool with civil liberties, if we could get rid of the Bill of Rights, we could be a more effective law enforcement agency. If we could arrest people we think are going to violate the law, we could be more efficient. We don't live in that country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me assure my good friend from Texas that I have seen "Minority Report."

Mr. GRAMM. You have?

Mr. LEVIN. I have.

Mr. GRAMM. Then you got the idea from it.

Mr. LEVIN. As a matter of fact, I got the idea for the protections we write in here from "Minority Report" just because, as a tribute to the protections and civil liberties that are defended and protected in "Minority Report," I had to be absolutely certain we would put these protections in our bill, to make sure that only if there were reason to believe a transfer of assets was going to go outside of the United States, or there would be conversion of assets, or it would endanger the life or physical safety of an individual, or result in flight from prosecution—those very criteria, carefully delineated, that are a tribute to the civil liberties and protections and

privacy rights in this country to which my good friend from Texas just referred.

I can assure my good friend from Texas, the lesson of "Minority Report" is carefully reflected in this amendment. I saw that because I knew the Senator from Texas was going to raise that movie. With that kind of foresight, I decided, knowing just how he does this so beautifully on the floor of the Senate, I had better see "Minority Report." That is why I want to assure the Senator from Texas that these very protections which he is so careful to delineate are in fact set forth in this amendment. We have these criteria laid out in this amendment.

Mr. REID. I don't want to take away from the seriousness of the debate, but I haven't seen "Minority Report." I have seen "Big Fat Greek Wedding," and I would recommend that.

[Laughter.]

Mr. LEVIN. It sounds as if I have not been doing too much else, but I have also seen that—since we are giving testimonials to movies here.

The language to which the Senator from Texas objects, about penalizing people for what they are going to do—that is language which the good Senator from Texas, as chairman and ranking member of the Banking Committee, has overseen for years. That is the same language that currently exists in the SEC law. We are not adding anything new here. This is the SEC law, section 77(h)(1): Cease and desist proceeding, authority of the Commission.

If the Commission finds after notice and opportunity for a hearing that any person is violating, has violated or is about to violate any provision——

That is existing law. The Senator from Texas has overseen that for all these years. He has done a brilliant job as chairman and ranking member of the Banking Committee, and we are just simply following the language that exists already in the SEC law and applying it to folks who are not now covered.

Mr. GRAMM. Will the Senator yield?

Mr. LEVIN. For a question, I will be happy to.

Mr. GRAMM. What the Senator saying is they can issue cease and desist orders under these circumstances, but they can't fine somebody. You are not only ceasing and desisting them—I have no problem. In the movie—and that is where you got this idea from. I thought it was.

In the movie, I don't object to them grabbing the guy who is about to stab his poor wife. It is putting him in prison, not for attempted murder—he did that—but for killing her when she is not dead.

Mr. LEVIN. The Senator from Texas raises an issue which, I am afraid, is also addressed in current law. It is not just cease and desist orders, it is the implementation of civil fines. We are following the same language. But what we are saying is, if the SEC has power to impose a fine on a broker, based on the standards which exist in this law, there is no reason the SEC should not have the same power to impose a fine on an auditor or on a director who violates the regulations and laws of this land. This is the same language. We haven't added anything new.

What is new here is that for the first time there will be the potential, the power in the SEC, subject to an appeal to the court—which is another protection of our civil liberties—subject to an appeal to the court, to impose a civil fine, administratively, on people who are now let off the hook. There is no reason for this gap in the law.

If, in fact, there is a problem that the Senator has raised, with language, that language is in the existing law for SEC. It is in the existing law for FDIC, the Federal Deposit Insurance Corporation:

If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution affiliated party is engaged or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution affiliated party is about to engage—

The words which the Senator from Texas mocks are in existing law, in the FDIC law, in the SEC law.

There may be reasons the Senator wants to maintain this gap in enforcement, but that cannot be used as the reason. That cannot be used.

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO RECOMMIT WITH AMENDMENT NO. 4270

(Purpose: To require publicly traded companies to record and treat stock options as expenses when granted for purposes of their income statements)

Mr. MCCAIN. Mr. President, I move to recommit the bill to the Committee on Banking, Housing, and Urban Affairs with instructions to report the bill back forthwith, with the following amendment that I send to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Arizona (Mr. McCain) moves to recommit the bill (S. 2673) to the Committee on Banking, Housing and Urban Affairs, with instructions to report back forthwith with the following amendment, numbered 4270:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4271

Mr. REID. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mr. Edwards, for himself, Mr. Enzi, and Mr. Corzine, proposes an amendment numbered 4271 to the instructions of the motion to recommit S. 2673 to the Committee on Banking.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

Mr. MCCAIN. I object. I would like to hear what the amendment says.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to read the amendment.

Mr. REID. I say to my friend, I will be happy to have it read, but it is the exact same amendment that was pending beforehand.

Mr. MCCAIN. Thank you.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To address rules of professional responsibility for attorneys)

At the end of the instructions add the following:

"(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors, or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 4272 TO AMENDMENT NO. 4271

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. REID. Mr. President, I send a second amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mr. Levin, for himself, Mr. Nelson of Florida, Mr. Harkin, Mr. Corzine, and Mr. Biden, proposes an amendment numbered 4272 to amendment No. 4271.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. REID. Mr. President, I appreciate the cooperation of the Senator from Arizona. There are other ways we could have gotten to the point we are now. This just made it a lot easier. I appreciate that very much.

I say this, before I yield the floor, to my friend from Arizona. We are now in the exact same posture we were in prior to the Senator from Arizona offering his amendment—his instructions, I should say.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before the Senator from Nevada leaves the floor, I wonder if he would respond to a question. Do we intend to vote on these pending amendments and the motion to recommit?

Mr. REID. I say to my friend, we have been trying very hard. I have received instructions—it is probably the wrong word, but Senator Edwards has been here for 2 days, and he left here for a while this afternoon waiting to vote on his amendment. Senator Levin has been here for several days—2 days. We would like very badly to vote on the Levin second-degree amendment and the Edwards first-degree amendment.

I have spoken to the manager of the bill for the minority. It appears very unlikely that we are going to be able to do that. I think that is a disappointment. I think some of these relevant—I shouldn't say some—I think all of these relevant amendments we can get up to prior to the cloture vote, we should try to dispose of.

But I understand the rules of the Senate. I am disappointed to say, my friend from Texas also understands them, so even though I would like votes, it does not appear we are going to be able to have votes.

Mr. MCCAIN. Mr. President, I thank my friend from Nevada for his candor. I think it is pretty obvious. Everybody ought to understand what is happening as we go through these arcane procedures.

The whole purpose of this—the whole purpose of what we just went through—is to not have a vote on anything that has to do with stock options. Let's be very clear what that is all about.

Whatever side you are on on the issue, the fix is in, as we say all too often in the sport of boxing. The fix is in and we will now have cloture invoked and there will not be a vote on stock options.

While my friend from Nevada is still here, I can tell him, I understand the rules of the Senate. I have been through other difficult issues on which I have been blocked from getting votes. I tell my friend from Nevada, and all of my colleagues, we will have a vote on stock options. We will have—sooner or later—a vote on stock options. And I only regret that we cannot do it now, get it over with, and get everybody on record.

I also would make one additional comment. I hope I do not harm the feelings of any of my colleagues. This is an important issue. This is a very important issue, no matter where you stand on the issue of stock options and how they should be accounted. It is a very important issue.

Why is it that this body would not take up the issue and have an up-or-down vote on how stock options are treated? I would ask the manager of the bill, why would we not at least allow a vote up or down?

I will read editorials. In fact, it may be sometime before I give up the floor because I have a lot to say about this issue. I will read from Mr. Greenspan's speech, a fairly widely respected individual,

who says—well, I will read his speech in just a minute. He is in favor of treating stock options as an expense.

So is Mr. Stiglitz and Mr. Buffett, and so many others, who are aware of this issue and its impact and the way it has been terribly abused by the same people we are trying to go after, the same people we are after.

Mr. SARBANES. Will the Senator yield for a response to his question?

Mr. MCCAIN. According to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions, which allowed the corporation to severely reduce their payment in taxes. According to reports that I think I have here, over $1 billion in stock options were issued to the senior executives of WorldCom.

This is an important issue. I respect the views of my colleagues who disagree with my position and that of Mr. Greenspan, Mr. Stiglitz, and Mr. Buffett in various op-eds and editorials in newspapers throughout America. But why would we not vote on it? That is the question.

Why would the distinguished Senator and friend from Nevada feel it incumbent upon himself to not allow a vote on stock options? I guess that question can be answered by observers.

But here is the deal. I want to tell my friend from Nevada again, there will be a vote on how stock options are treated. I will repeat the amendment. I will repeat the amendment and will repeat it again several times before I finish discussing this issue. The issue, no matter how you feel, should be addressed. But through the invocation of cloture, everybody knows that the amendment and the motion to recommit will fall.

I want to repeat. The amendment is fairly clear-cut, fairly simple. We deal with a lot of arcane issues in the discussion of this regulatory reform. But I repeat:

> Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

It is very simple. It does not say anything about the tax treatment of it. It does not say anything about a number of other rather controversial aspects. It just says it will "record the granting of the option as an expense in that corporation's income statement. . . ."

Mr. President, it is curious to me—actually, it is not curious to me—why a vote on this amendment is blocked. It is because every lobbyist in this town for the high-tech community has said: Don't do it. Don't do it. The one thing that the folks in Silicon Valley are scared of more than anything else is that they would lose their precious stock options—all of it, of course, in the interest of the employee, only the employees, the secretaries, the workers, those people who are down there toiling in the bowels of the corporation, trying to get some incentive to stay there and have their retirement.

Meanwhile, Mr. Ellison, the CEO of Oracle, last year, cashes in $706 million worth of stock options, $706 million worth of stock options in 1 year. Are we going to vote on it? Yes, we will vote on it. Maybe not now, but unless there is cloture on every single bill

that comes before this body, there will be a vote on stock options. I want to assure my friend from Nevada of that.

I will just remind him, there were many who wanted to block a vote on campaign finance reform for a long period of time. Well, we got our vote on campaign finance reform, and we will get a vote on stock options.

We have to end the double standard for stock options. Currently corporations can hide these multimillion-dollar compensation plans from their stockholders or other investors because these plans are not counted as an expense when calculating company earnings.

I want to make it perfectly clear to all, I am not in favor of doing away with stock options. Stock options have a valuable place in American corporate life. What we are addressing here is how they are treated so investors can know exactly what the profit and loss of a corporation is.

I repeat: I am not in favor of eliminating stock options. What I am trying to do is exactly in accordance with Mr. Greenspan's comments from which I will quote. Federal Reserve Chairman Alan Greenspan, New York University, March 26, 2002:

> Some changes, however, appear overdue. In principle, stock-option grants, properly constructed, can be highly effective in aligning corporate officers' incentives with those of shareholders. Regrettably, the current accounting for options has created some perverse effects on the quality of corporate disclosures that, arguably, is further complicating the evaluation of earnings and hence diminishing the effectiveness of published income statements in supporting good corporate governance. The failure to include the value of most stock-option grants as employee compensation and, hence, to subtract them from pretax profits has increased reported earnings and presumably stock prices. This would be the case even if offsets for expired, unexercised options were made. The Financial Accounting Standards Board proposed to require expensing in the early to middle 1990s but abandoned the proposal in the face of significant political pressure.
>
> The Federal Reserve staff estimates that the substitution of unexpensed option grants for cash compensation added about 2½ percentage points to reported annual growth in earnings of our larger corporations between 1995 and 2000. Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms.

Especially in high-tech firms? Where is most of the opposition coming from to the proper accounting of stock options? From the high-tech firms. I repeat:

> Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms. If market participants indeed have been misled, that, in itself, should be surprising, for there is little mystery about the effect of stock-option grants on earnings reported to shareholders. Accounting rules require enough data on option grants be reported in footnotes to corporate financial statements to enable analysts to calculate reasonable estimates of their effect on earnings.
>
> Some have argued that Black-Scholes option pricing, the prevailing means of estimating option expense, is approximate. But so is a good deal of other earnings estimates, as I indicated earlier. Moreover, every other corporation does report an implicit estimate of option expense on its income statement. That number for most, of course, is zero. Are option grants truly without any value?

I repeat Mr. Greenspan's question: Are option grants truly without any value?

> Critics of option expensing have also argued that expensing will make raising capital more difficult. But expensing is only a bookkeeping transaction. Nothing real is changed in the actual operations or cash-flow of the corporation. If investors are dissuaded by lower reported earnings as a result of expensing, it means only that they were less informed than they should have been. Capital employed on the basis of misinformation is likely to be capital misused.

Critics of expensing also argue that the availability of options enables corporations to attract more-productive employees. That may well be true. But option expensing in no way precludes the issuance of options. To be sure, lower reported earnings as a result of expensing could temper stock price increases and thereby exacerbate the effects of share dilution. That, presumably, would inhibit option issuance. But again, that inhibition would be appropriate, because it would reflect the correction of misinformation.

I am not sure this debate is between me and the high-tech community. I think the debate is somewhat different. When you look at the preponderance of opinion, not only that stock options need to be expensed but the incredible effect that it has had on the whole distortion of the market, then it is an important issue.

I ask again: How can we really address the entire issue we are facing without addressing the issue of stock options? That is like playing a baseball game without third base.

Mr. Joseph Stiglitz, noble laureate professor of economics at Columbia University on Tuesday, March 12, 2002:

Some contend that it is difficult to obtain an accurate measure of the value of the options. But this much is clear: zero, the implicit value assigned under current arrangements, is clearly wrong. And leaving it to footnotes, to be sorted out by investors, is not an adequate response, as the Enron case has brought home so clearly. At the Council of Economic Advisers, we devised a formula that represented a far more accurate lower bound estimate of the value of the options than zero. Moreover, many firms use formulae for their own purposes, in valuing stock options (charging them against particular divisions of the firm). However, Treasury, in its opposition to the FASB concerns, was singularly uninterested in these alternatives. I leave it to others to hypothesize why that might have been the case.

If we are to have a stock market in which investors are to have confidence, if we are to have a stock market which avoids the kind of massive misallocation of resources that result when information provided does not accurately report the true condition of firms, we must have accounting and regulatory frameworks that address these issues. As derivatives and other techniques of financial engineering become more common, these problems too will become more pervasive. While headlines and journalistic accounts describe some of the inequities—those who have seen their pensions disappear as corporate executives have stashed away millions for themselves—what is also at stake is the long run well being of our economy. The problems of Enron and Global Crossing are part and parcel of the current downturn.

I was under the impression this legislation was all about trust and transparency—regaining the trust of the American people and investors in the stock market and, frankly, the economic system that drives America and has been so successful, and transparent. Perhaps under this legislation, by beefing up many of the penalties and regulations and many other things—many of which I have recommended and strongly supported and will have in further amendments, but how in the world do we say that we have given transparency when, in the view of most experts, this is one of the greatest hindrances to transparency in the system as it exists today?

I would now like to read the opinion of Mr. Warren Buffett, in the Washington Post, April 9, 2002, Stock Options and Common Sense:

In 1994 seven slim accounting experts, all intelligent and experienced, unanimously decided that stock options granted to a company's employees were a corporate expense.

Six fat CPAs, with similar credentials, unanimously declared these grants were no such thing.

Can it really be that girth, rather than intellect, determines one's accounting principles? Yes indeed, in this case. Obesity—of a monetary sort—almost certainly explained the split vote.

The seven proponents of expense recognition were the members of the Financial Accounting Standards Board, who earned $313,000 annually. Their six adversaries

were the managing partners of the (then) Big Six accounting firms, who were raking in multiples of the pay received by their public-interest brethren.

In this duel the Big Six were prodded by corporate CEOs, who fought ferociously to bury the huge and growing cost of options, in order to keep their reported earnings artificially high. And in the pre-Enron world of client-influenced accounting, their auditors were only too happy to lend their support.

The members of Congress decided to adjudicate the fight—who, after all, could be better equipped to evaluate accounting standards?—and then watched as corporate CEOs and their auditors stormed the Capitol. These forces simply blew away the opposition. By an 88-9 vote, U.S. senators made a number of their largest campaign contributors ecstatic by declaring option grants to be expense-free. Darwin could have foreseen this result: It was survival of the fattest.

The argument, it should be emphasized, was not about the use of options. Companies could then, as now, compensate employees in any manner they wished. They could use cash, cars, trips to Hawaii or options as rewards—whatever they felt would be most effective in motivating employees.

But those other forms of compensation had to be recorded as an expense, whereas options—which were, and still are, awarded in wildly disproportionate amounts to the top dogs—simply weren't counted.

The CEOs wanting to keep it that way put forth several arguments. One was that options are hard to value. This is nonsense: I've bought and sold options for 40 years and know their pricing to be highly sophisticated. It's far more problematic to calculate the useful life of machinery, a difficulty that makes the annual depreciation charge merely a guess. No one, however, argues that this imprecision does away with a company's need to record depreciation expense. Likewise, pension expense in corporate America is calculated under widely varying assumptions, and CPAs regularly allow whatever assumption management picks.

Believe me, CEOs know what their option grants are worth. That's why they fight for them.

It's also argued that options should not lead to a corporate expense being recorded because they do not involve a cash outlay by the company. But neither do grants of restricted stock cause cash to be disbursed—and yet the value of such grants is routinely expensed.

Furthermore, there is a hidden, but very real, cash cost to a company when it issues options. If my company, Berkshire, were to give me a 10-year option on 1,000 shares of A stock at today's market price, it would be compensating me with an asset that has a cash value of at least $20 million—an amount the company could receive today if it sold a similar option in the marketplace. Giving an employee something that alternatively could be sold for hard cash has the same consequences for a company as giving him cash. Incidentally, the day an employee receives an option, he can engage in various market maneuvers that will deliver him immediate cash, even if the market price of his company's stock is below the option's exercise price.

Finally, those against expensing of options advance what I would call the "useful fairy-tale" argument. They say that because the country needs young, innovative companies, many of which are large issuers of options, it would harm the national interest to call option compensation as expense and thereby penalize the "earnings" of these budding enterprises.

Why, then, require cash compensation to be recorded as an expense given that it, too, penalizes earnings of young, promising companies? Indeed, why not have these companies issue options in place of cash for utility and rent payments—and then pretend that these expenses, as well, don't exist? Berkshire will be happy to received options in lieu of cash for many of the goods and services that we sell corporate America.

At Berkshire we frequently buy companies that awarded options to their employees—and then we do away with the option program. When such a company is negotiating a sale to us, its management rightly expects us to proffer a new performance-based cash program to substitute for the option compensation being lost. These managers—and we—have no trouble calculating the cost to the company of the vanishing program. And in making the substitution, of course, we take on a substantial expense, even though the company that was acquired had never recorded a cost for its option program.

Companies tell their shareholders that options do more to attract, retain and motivate employees than does cash. I believe that's often true. These companies should keep issuing options. But they also should account for this expense just like any other.

A number of senators, led by Carl Levin and John McCain, are now revising the subject of properly accounting for options. They believe that American businesses,

large or small, can stand honest reporting, and that after Enron-Andersen, no less will do.

I think it is normally unwise for Congress to meddle with accounting standards. In this case, though, Congress fathered an improper standard—and I cheer its return to the crime scene.

This time Congress should listen to the slim accountants. The logic behind their thinking is simple.

One, if options aren't a form of compensation, what are they?

Two, if compensation isn't an expense, what is it?

Three, and if expenses shouldn't go into the calculation of earnings, where in the world should they go?

Mr. President, I have to admit to you that I stood fifth from the bottom of my class at the Naval Academy. I don't pretend to understand a lot of the nuances and hidden workings of the stock market or many of the issues we are facing today because there were some very imaginative CEOs and corporate officers who have deprived investors of their money and hundreds of thousands of people of their jobs. But even I can understand Mr. Buffett's questions:

If options aren't a form of compensation, what are they?

If compensation isn't an expense, what is it?

And if expenses should not go into the calculation of earnings, where in the world should they go?

Mr. President, that is why this amendment is simple:

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

That is not a complicated issue, and there will be discussion from time to time about what the tax implications are and all those things. I would be glad to have smarter people than I figure it out.

I want to read a letter to the editor of the New York Times by Steven Barr, senior contributing editor of CFO Magazine, April 5, 2002. Reference: "Leave Options Alone" by John Doerr and Frederick W. Smith:

What if, in the mid-1990s, accounting-rule makers had not caved in to lobbyists and instead had forced companies to recognize options as a compensation expense on financial statements?

There would still have been a technology boom, a bear market, and a period of recession. Such cycles are immutable. But there may have been less of the accounting gamesmanship that is now the object of government investigation and investor ire.

Options should count as an expense to the corporation, and the ability to exercise them should be based on stock performance that exceeds an index of peers.

Mr. President, one of the more egregious activities we have seen with some of these really unsavory people has been that while their company stock was declining, they exercised their stock options and sold them, making hundreds of millions of dollars.

As I said earlier, in the case of Enron—I heard WorldCom was $1.8 billion, or Enron, I am not sure which—at the same time in the case of Enron, the employees, in testimony before the Commerce Committee, said they were urged to hang on to the stock, hang on to the Enron stock. Meanwhile, the executives were selling the stock. I do not know of anything quite as egregious as that.

As I mentioned, according to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax de-

ductions which allowed the corporation to severely reduce their payment in taxes.

I repeat, no other type of compensation gets treated as an expense for tax purposes without also being treated as an expense on the company books. This double standard is exactly the kind of inequitable corporate benefit that makes the American people irate and must be eliminated.

If companies do not want to fully disclose on their books how much they are compensating their employees, then they should not be able to claim a tax benefit for it.

The Washington Post, Thursday, April 18, 2000:

Alan Greenspan, perhaps the Nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffett, perhaps the Nation's foremost investor, has long argued the same line. The Financial Accounting Standards Board, the expert group that writes accounting rules, reached the same conclusion eight years ago. The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the common-sense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. Yet today's Senate Finance Committee hearing on the issue is likely to be filled with dissenting voices. There could hardly be a better gauge of money's power in politics.

The Washington Post said:

There could hardly be a better gauge of money's power in politics.

Why does this matter? Because the current rules—which allow companies to grant executives and other employees millions of dollars in stock options without recording a dime of expenses—make a mockery of corporate accounts. Companies that grant stock options lavishly can be reporting large profits when the truth is they are taking a large loss. In 2000, for example, Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profit; the real number was a $2.7 billion loss.

Mr. President, those numbers are staggering. Let me repeat:

Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profits; the real number was a $2.7 billion loss. By reporting make-believe profits, companies may have conned investors into bidding up their stock prices. This is one cause of the Internet bubble, whose bursting helped precipitate last year's economic slowdown.

It is not surprising, therefore, that the expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. But the dissenters are intimidated by neither experts nor logic. They claim that the value of options is uncertain, so they have no idea what number to put into the accounts. But the price of an option can actually be calculated quite precisely, and managers have no difficulty doing the math for purposes of tax reporting. The dissenters also claim options are crucial to the health of young companies. But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense. Finally, dissenters say that options need not be so counted because granting them involves no cash outlay. But giving employees something that has cash value amounts to giving them cash.

The dissenters include weighty figures in both parties. Sen. Joe Lieberman (D-Connecticut) is the chief opponent of options sanity in the Senate, and last week President Bush himself declared that Mr. Greenspan is wrong on this issue. What might be behind this? Many of the corporate executives who give generously to politicians are themselves the beneficiaries of options—often to the tune of millions of dollars. High-tech companies, an important source of campaign cash, are fighting options reform with all they've got. But if these lobbyists are allowed to win the argument, they will undermine a key principle of the financial system. Accounting rules are meant to ensure investors get good information. Without good information, they cannot know which companies will best use capital, and the whole economy suffers in the long run.

Mr. President, again, transparency and trust. Transparency and trust. Without transparency, we are not going to have trust.

A Washington Post, April 21, 2002, editorial; byline David S. Broder. Mr. Broder writes:

> Thanks to the Enron scandal, the public is getting to know about a scheme that corporate executives have used for years, but that most of us were not smart enough to understand.

I include myself in that group that Mr. Broder describes.

> You can call it the have-your-cake-and-eat-it-too ploy.
>
> It involves stock options, the rights to buy company stock some time in the future at the (presumably bargain) price at which it is selling currently. Stock options awarded to senior management by their (usually hand-picked) boards of directors mushroomed from $50 billion in 1997 to $162 billion just three years later. As Business Week pointed out in its April 15 issue, boards have been "lavishing options on executives" so profligately "that they now account for a staggering 15 percent of all shares outstanding."
>
> This is obviously a good deal for the executives. One of them, Oracle Corporation's Lawrence Ellison, exercised options worth $706 million in one week. A nice mouthful of cake, by any standard.
>
> But here's how his company—and all others like it—can have its cake, too. The value of the stock options granted Ellison is a cost to Oracle for tax purposes, but it doesn't come off the bottom line when Oracle is reporting its earnings for the year.
>
> This would seem to defy common sense—and it does. Almost a decade ago, as the options craze was getting under way, the Federal Accounting Standards Board—the watchdog group—said that when options are granted, they should be treated as an expense in company reports as well as in tax returns. The corporate CEOs and the accounting firms they hire went nuts, and the next thing you knew, the Senate in 1994 was passing a resolution . . . telling the watchdog: forget it.

Mr. GRAMM. Mr. President, will the Senator yield? I do not want to break in, but a key point I would like to make—and I thought the Senator might want a breather——

Mr. MCCAIN. I would appreciate it if the Senator would phrase it in the form of a question, as he is very adept at doing. I will be glad to yield for his question.

Mr. GRAMM. I thought it was very important to make this point. What happened almost a decade ago when we saw this blossoming of stock options? The answer is, in 1993, we passed a law that said that if you paid a corporate executive more than $1 million a year in a plain old paycheck, you could not deduct it as an expense in running the business.

At that time, the largest companies in America—and I am trying to make a point that is in no way contradicting anything the Senator says, though I do not agree with a word of it, but what we said was you could not pay a corporate executive, through their paycheck, more than a million a year, even though the 50 largest companies in America were paying their corporate executives $3 million a year, on average.

When we passed that law, what happened? What happened is that corporate America, being clever—you do not make $3 million a year if you are not pretty smart—figured out ways around the law. Some of the ways around the law were getting loans from the company at low interest rates and getting stock options, which are now criticized as giving corporate leadership a very short-term horizon.

The only point I want to make is that everybody has forgotten that in 1993 Congress, in a demagogic amendment aimed at "rich people," started this whole process.

It struck me when you were saying this group of accountants got together in 1994, what they were doing was responding to a bad law, and the bad law helped trigger this. One of the things—and God knows it is not going to happen in the environment we are in now—but one of the things Congress ought to do is to repeal that law so General Electric could pay its CEO with a paycheck, like everybody else, instead of trying to find all these ways around the law. I just wanted to get in that advertisement.

Mr. MCCAIN. I would like to respond to the Senator's question by saying that I think the Senator makes a very valid point. I think this is probably none of Congress's business as to what salaries should be bestowed on a corporate executive, with truly independent boards of directors and with a voice of the stockholders.

Let me say to the Senator before he leaves, I am not talking about doing away with stock options. I am talking about how they are treated. They may have gotten around that, but it is how they are treated. As we get into the debate further, I would be glad to hear him respond to Mr. Buffett's three questions.

Mr. GRAMM. I would be happy to respond to Mr. Buffett.

Mr. MCCAIN. I ask unanimous consent for Senator Gramm to respond without me losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. I would be happy to respond to him. First, I would have been happy to have voted on the Senator's amendment.

Mr. MCCAIN. I thank the Senator.

Mr. GRAMM. Second, this is something I am happy to debate. The only point I wanted to make is that while we are all damning corporate America, our law, which said if you paid somebody more than $1 million a year it could not count as a business expense, really helped trigger all of this. One of the things we ought to be doing in the name of reform is to repeal that law.

When I tried today in Finance—the Senator said this would not be brought up in Finance, but today in the Finance Committee I thought we ought to have one Good Government amendment, and it failed, like logic and truth, for the lack of a second. That is my only point.

Mr. MCCAIN. I thank the Senator. I especially thank him for agreeing because the Senator from Texas—we have had our agreements, mostly agreements and occasional disagreements—has never, in all the years we have known each other, which goes back to our days in the other body, wanted to deprive anybody of a vote on an issue, no matter where he stood on that issue.

I regret deeply that it is clear, as I said earlier, the fix is in; there is not going to be a vote on this issue before cloture is invoked, but I want to again assure my colleagues there will be a vote. There will be a vote on this issue, just like when I was blocked for a long time on the line-item veto, I was blocked for a long time on campaign finance reform, I have been blocked on a lot of other issues but we always got a vote because that is my right as a Senator to get a vote.

It is not my right as a Senator to determine the outcome, but it is my right as a Senator to get a vote on an issue, particularly when, in the view of any observer, stock options are a key issue in this entire debate.

Again, I respect the views of the Senator from Texas who disagrees with my position. I think it is a respectful disagreement that we have. I look forward to debating him. I do so at some disadvantage because he is a trained economist and former professor of economics.

I can also see why he would want to do away with that million-dollar cap because I am sure the Senator from Texas will make more than a million dollars when he leaves this body, and justifiably so given his talent, expertise, and experience. I wish him well. I wish him every success in doing so.

At least the Senator from Texas is in agreement that we should have a vote on this issue.

The question is going to be raised by me and others, time after time: Why did we not have a vote on this issue? If we are truly committed to reforming the system, restoring trust and transparency to the system, why do we not have a vote on it? That is a very legitimate question. There will be a vote.

I will return to Mr. Broder's editorial. He talks about that:

> The Federal Accounting Standards Board said that when options are granted, they should be treated as an expense.

And the Senate passed a resolution telling the watchdogs, forget it.

> And that has had a truly wondrous effect. On average, the Federal Reserve Board estimates, the ruling has boosted the reported earnings growth of corporations by 3 percentage points from a realistic 6 percent to an inflated 9 percent. Enron, it is estimated, used that same ruling in 2000 to inflate its earnings by more than 10 percent. Overstated earnings, of course, boost stock prices, thus benefiting the executives who have been given stock options.

By the way, I might add, not only stock options but it increases compensation because the stock value is inflated.

> But that is not the end of it. Because these stock options are deductible for tax purposes, and their cost can be carried forward for years, they also enable companies that hand out a lot of options to stiff-arm the IRS. In Enron's case, they allowed the company to cut its tax bill by $625 million between 1996 and 2000.

Especially on my side of the aisle, there is this continuous drumbeat: Let us make the tax cuts permanent; let us do away with the death taxes; let us make the tax cuts permanent; let us help the American taxpayer. Should we not try to make a corporation pay its legitimate taxes? In Enron's case, because of the use of stock options, they allowed the company to cut its tax bill by $625 million over a period of 4 years. Amazing.

> Thanks to Enron, another push is under way to stop the double-dealing. But it faces tough sledding. The Coalition to Preserve and Protect Stock Options, which includes 32 influential trade associations, is flooding Congress with 'talking points' claiming that 'stock options are a vital tool in the battle for economic growth and job creation . . . (and) to attract, retain and motivate talent.'
>
> The coalition is trying to kill a bill that would not end stock options but simply specify that companies could not use them to reduce their taxes unless they also report them as an expense in their financial statements.
>
> The bill has bipartisan sponsorship: Democratic Senators Carl Levin of Michigan, Mark Dayton of Minnesota and Dick Durbin of Illinois; Republican Senators John McCain of Arizona and Peter Fitzgerald of Illinois. Fitzgerald is particularly inter-

esting. He is from a wealthy banking family and is a staunch conservative, but Enron has made him almost a raging populist.

It has had no such effect on President Bush. Concerned as always for the deserving rich, he told the Wall Street Journal he opposes this kind of legislation. . . . But Federal Reserve Board Chairman Alan Greenspan testified recently in support of expensing stock options. The only issue, he said, is whether under current rules, "is income being properly recorded? And I would submit to you that the answer is no."

That is what Alan Greenspan says: Is income being properly reported? And I would submit to you that the answer is no.

And superinvestor Warren Buffett, who hands out bonuses but not stock options to his employees—

By the way, I have not heard of any bad morale or failure to attract employees out at Berkshire Hathaway out in Omaha, a lovely place to live—for years has been asking three questions: "If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?"

That is what Mr. Broder has to say.

Paul Krugman, on May 17, 2002:

On Tuesday Standard & Poor's, the private bond rating agency, announced that it would do something unprecedented: It will try to impose accounting standards substantially stricter than those required by the Federal government. Instead of taking corporate reports at face value, S&P will correct the numbers to eliminate what it considers the inappropriate treatment of "one-time" expenses, pension fund earnings and, above all, stock options—a major part of executive compensation that, according to Federal standards, somehow isn't a business expense. S&P's estimate of "core earnings" for the 500 largest companies slashes reported profits by an astonishing 25 percent.

Why does S&P—along with Warren Buffett, Alan Greenspan and just about every serious financial economist—think that current accounting standards require a drastic overhaul? And if such an overhaul is needed, why doesn't the government do it? Why does S&P think that it must do the job itself?

To see the absurdity of the current rules, consider stock options. An executive is given the right to purchase shares of the company's stock, at a fixed price, some time in the future. If the stock rises, he buys at bargain prices. If the stock falls, he doesn't exercise the option. At worst, he loses nothing; at best, he makes a lot of money. Nice work if you can get it.

Yet according to Federal accounting standards, such deals don't cost employers anything, as long as the guaranteed price isn't below the market price on the day the option is granted. Of course, this ignores the "heads I win, tails you lose" aspect; executives get a share of investors' gains if things go well, but don't share the losses if things go badly. In fact, companies literally apply a double standard: they deduct the cost of options from taxable income, even while denying that they cost anything in their profit statements.

So how could it possibly make sense not to count options as a cost? Defenders of the current system argue that stock options align the interests of executives with those of investors. Even if that were true, however, it wouldn't justify ignoring the cost—no more than it would make sense to deny that wages, which provide incentives to workers, are a business expense. Furthermore, it's now clear that stock options, far from reliably inducing executives to serve shareholders, often create perverse incentives. At worst, they handsomely reward managers who run their companies as pump-and-dump schemes, executives at Enron and many other companies got rich thanks to stock prices that soared before they collapsed.

I hope the opponents of this provision, including my friend from Texas, will put it into the real-world context. It is nice to talk about economic theory. I know of no one better at that than the Senator from Texas. What happened at Enron? What happened at Enron when it cashed in $600 million worth of stock options and the stock tanks and there are 10,000 or so employees out of work? And there was a period of time where the employees were not al-

lowed, because they were undergoing some managerial change of their portfolio, to cash in their stock options. But the executives were not prohibited from doing so. They kept on doing it. They kept on doing it.

So I hope we can have this debate not in the world of theories of economics. I am not a CPA, nor am I a professor of economics, nor am I as smart as most of the Members of this body, but I know what happened to these people. I know of the thousands left penniless. I know of the thousands whose retirement savings were wiped out.

Meanwhile, the very people this whole stock option deal was supposed to be protecting were not protected, and yet somehow the executives all made out like bandits.

Perhaps my colleagues, as they oppose this legislation, can talk about the real-world examples—not the theoretical world of economics, which I will immediately grant them a distinct advantage on. I would like for them to have the opportunity to meet some of these employees, as I have, who were told by the executives of the corporation the stock was in great shape, while they were dumping the stock. I would like for them to talk to the employees or the retirees who invested enormous amounts of their money and their life savings, in some cases in a stock, and were told by their employers and executives that everything was great, things could not be better, estimates of double the stock value over the next few years.

That is the framework of this debate, not the framework of whether certain economic theories are valid or not.

> Options are only part of an accounting system in deep trouble. As David Blitzer, S&P's chief investment strategist, recently wrote, "Financial markets are as much a social contract as is democratic government." Yet there is a growing sense that this contract is being broken, undermining the trust that is so essential to the operation of financial markets. Clearly, major reforms are needed. And bear in mind that this isn't a left-right issue; it's about protecting investors—middle-class and wealthy alike from exploitation by self-dealing insiders. So who could possibly be opposed? You'd be surprise.
>
> Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform.

Bear in mind, this is not a left-right issue. It is about protecting investors, middle class and wealthy alike, from exploitation by self-dealing insiders. So who could possibly be opposed? You would be surprised. Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform. Mr. Blitzer of S&P points out that in previous periods of corporate scandal, legislatures and prosecutors took the lead with public concerns over the market.

It is a sad commentary on our leadership that this time he believes he must do the job himself—referring to Standard and Poors—and announced that it would impose accounting standards substantially stricter than those required by the Federal Government.

Boston Globe, June 10, 2002:

> Stock options have become the currency of choice to reward high ranking executives in part because under current rules the company need not count them as an expense with much of their compensation. Depending on the difference between the option price of the stock and the market price, it is no wonder that some executives have used trickery to show quarterly growth and inflate the worth of their compa-

nies. Excessive reliance on stock options is a license for some executives to drive their companies along treacherous roads.

I have a number of other views, but I think I have made my point. The point is this: Why should we, in the name of restoring confidence, trust, and transparency to the American people on an issue of this import, not have a vote? That is the first question.

The second question that needs to be answered is Mr. Buffett's question, not mine; not mine because I don't claim to have a corner on expertise and knowledge on this issue. But I believe that Mr. Buffett does. I believe that Mr. Greenspan does. I believe that literally every outside observer and economist does. If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?

I know what I will hear in response. In fact, most of those have already been responded to so I don't intend to engage in extended debate about it. We all know where the majority stock options have gone—to the executives, not to the workers. Mr. Buffett, and many others, have been able to attract good and talented employees and retain them without having to resort to stock options.

But the real question is not whether stock options are good or bad because the intent of the amendment is not to do away with stock options. The intent of the amendment is simply to give an accurate depiction of what stock options are. And that is clearly compensation. Depreciation is listed as an expense. In the view of many, that is much harder to calculate than a stock option.

Another argument I anticipate will be, how do you treat it taxwise? Frankly, I would be glad to treat it taxwise as to how the smartest people at the SEC would say it should be treated. I would leave that up to the two experts. But to not treat it as an expense, as Mr. Buffett says, of course is just Orwellian. It is Orwellian.

Mr. LEVIN. Will the Senator yield for a question?

Mr. MCCAIN. I am sorry my colleague will not allow a vote. I will be glad to respond to my colleague from Michigan.

Mr. LEVIN. I appreciate the Senator's yielding for a question. I wonder if the Senator would agree that the following individuals and organizations support the change in accounting for stock options, which the Senator has outlined: Alan Greenspan, Paul Volcker, Arthur Levitt, Warren Buffett, as the Senator mentioned, TIAA-CREF, Paul O'Neill, Standard & Poor's, Council for Institutional Investors, Consumer Federation, Consumers Union, AFL/CIO—among others? Would the Senator agree that those organizations support a change in the accounting for stock options?

Mr. MCCAIN. I would say to my friend, yes. I think there is another important organization, the Federal Accounting Standards Board—I believe it is—the international.

Mr. LEVIN. There are some additional organizations.

Mr. MCCAIN. Yes.

Mr. LEVIN. I wanted to give the Financial Accounting Standards Board.

Mr. MCCAIN. Yes.

Mr. LEVIN. Does the Senator remember, as I do very vividly because I appeared before the Federal Financial Standards Board in the middle 1990s to support their independence, when they decided

that you had to expense options, that it was compensation, that it had value like all other forms of compensation?

Does the Senator remember what the Financial Accounting Standards Board decided when they left it optional, as to whether or not to either expense options or to show them as a footnote—just to disclose them without actually expensing them? Because if the Senator does not, I would like to read what the Financial Accounting Standards Board said about the pressure they were put under, the horrendous, horrific pressure they were put under, and how they could have, indeed, been put out of existence if they went forward with what they believed was right, which is what Warren Buffett says.

If the Senator does not remember those words, I wonder if he might yield to me to read them, without losing his right to the floor.

Mr. MCCAIN. Yes.

Mr. LEVIN. This is what the Financial Accounting Standards Board said. They had proposed that stock options be expensed. That was their proposal. This is the board of accountants.

> The debate on accounting for stock-based compensation, unfortunately, became so divisive that it threatened the Board's future working relationship with some of its constituents. Eventually the nature of the debate threatened the future of accounting standards setting in the private sector. The Board continues to believe that financial statements would be more relevant and representationally faithful if the estimated fair value of employee stock options was included in determining an entity's net income, just as all other forms of compensation are included. To do so would be consistent with accounting for the cost of all other goods and services received as consideration for equity instruments. However, in December 1994, the Board decided that the extent of improvement in financial reporting that was envisioned when this project was added to its technical agenda and when the Exposure Draft was issued was not attainable because the deliberate, logical consideration of issues that usually leads to improvement in financial reporting was no longer present.

That is the climate that was created for this Board in 1994. And when the accountants, the Board, the Financial Accounting Standards Board of this country, said they have value, these options, they are compensation, they should be accounted for in the financial statement, they were hit upon so hard that even when they said we are throwing in the towel because it could destroy us, even when they said we will allow it to be shown as a footnote, not required to be taken as an expense—even then, they said this is not the right way to proceed.

We are now creating—I should ask a question, I think, given the request I made.

Does the Senator not agree that ideally what we should be allowing here is an independent Financial Accounting Standards Board to determine the rules?

Mr. MCCAIN. I could not agree more with the Senator from Michigan. I think he knows how strongly I believe that options should be expensed because they are compensation and they have value and there is no other form of compensation that is not expensed. It is a stealthy form of compensation and has driven the excesses of the 1990s. These options have driven the deceptions that make these financial statements for corporations look better than those corporations' situations really are because they have created so much value in those options that then executives—mainly executives—were able to cash in on these options and make tens

of millions of dollars based on financial accounting which was deceptive.

Would the Senator agree with that and agree that ideally these standards should be set by an independent financial accounting standards board?

Mr. MCCAIN. I say to my friend from Michigan, first of all, it was the Senator from Michigan who first initiated discussion with me on this issue several years ago. We were treated as virtual pariahs for having the audacity to challenge what was then, as we now know, a high-tech bubble in the way stock options were being disbursed.

By the way, let's do away with the myth that these stock options are for the average worker. The fact is the overwhelming majority of the stock options have gone to the chief executives. That is just a matter of record and fact.

But I think the Senator is correct. I think the Senator has also an additional, I think important, corollary to this amendment, that we could have certain direction from FASB, as it is known. But I think it is also a clear-cut, black-and-white issue as to how stock options should be treated.

I would be glad to agree with the Senator from Michigan that some of these aspects of it can be better handled by the experts.

Finally, the Senator from Nevada and the Senator from Maryland are in the Chamber. I hope they will reconsider and allow a vote postcloture at some time on this important amendment. I do not see how you can possibly go to the American people and say: Look, we have discussed and debated all these issues, but we wouldn't allow a vote on the issue of stock options.

There is no observer who does not believe that the issue of stock options is one of significant importance in this entire scenario of returning trust and transparency so we can regain the confidence of the American investor.

Again, I assure my friends, we will have a vote on this issue at some time, whether it be now on this bill or whether it be the next bill or the bill after that. So I hope my colleague from Nevada and my colleague from Maryland will allow an up-or-down vote on this amendment.

Mr. LEVIN. Will the Senator yield for one last question?

Mr. MCCAIN. I am glad to.

Mr. LEVIN. Assuming cloture is invoked, there is still, does my friend agree, the possibility at least of voting on germane amendments relating to this subject? So the amendment which is germane postcloture does not state what the Senator from Arizona and I believe, which is that unless we deal with this, we are missing a huge problem, we are not addressing a huge problem that has driven the situation that we now face in terms of deceptive financial statements. But, in any event, will the Senator from Arizona agree that at least postcloture, if an amendment is germane which says it is determined that FASB or an independent accounting board reviewed this matter, that at least there could be a vote at that time on something which carries out the spirit of what the Senator from Arizona and I have been fighting for, which is that an independent accounting board be allowed to proceed without

threatening its very existence to determine what is the proper accounting for stock options?

Mr. MCCAIN. I apologize to my colleagues for taking as much time as I have on this subject. As I said, I believe it is one of transcending importance in the minds of average American citizens. Yes. I would support the Senator's amendment postcloture. But I would also have to add that it doesn't address the issue completely. Here is why.

The Senator from Michigan just talked about how these boards have been intimidated and bullied into backing off of a position they had before. I can't have the confidence that any board that is subject to the kind of intimidation and bullying that has happened in the past would properly carry out what is a pretty simple operation.

I understand the Senator's point. I will support his amendment postcloture. I think it is an important one. But there has to be a clear signal sent. That clear signal is this: As Mr. Buffett says, if it isn't compensation, what is it? If options are not a form of compensation, what are they? If compensation is not an expense, what is it? If expenses shouldn't go into the calculation of earnings, where in the world should they go? This answers Mr. Buffett's question. We know where it should go—as an expense.

Again, I am not trying to do away with stock options but how it is treated so the American people can restore their confidence.

Mr. LEVIN. Will the Senator yield for a couple of questions which his comments have raised?

Mr. SARBANES. Will the Senator yield? The Senator directed a question.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I would be glad to yield to the Senator from Maryland for a comment without yielding my right to the floor.

Mr. SARBANES. I wanted to respond at this point because the Senator just directed a question. We are not trying to prevent a vote on your amendment. We have been trying repeatedly to get votes on these amendments. Senator Edwards has had an amendment pending in here for now more than a day. We can't get a vote on it. Senator Levin has had an amendment pending. We have a list of people who want to offer amendments. We have been trying to work through these amendments. Now the Senator has come with his amendment. There are a lot of amendments around here on which people are trying to get votes. I think they are entitled to those votes.

I know you have a problem. But I take some umbrage as sort of having it placed on my shoulders. In fact, I think that is totally inaccurate, and I just want to make sure I put that on the record.

Mr. MCCAIN. Thank you.

I ask unanimous consent that the McCain amendment be allowed postcloture.

Mr. REID. Objection.

Mr. MCCAIN. So you see.

Mr. SARBANES. No. That doesn't approve anything. The Senator wants his amendment——

Mr. MCCAIN. I have the floor.

Mr. SARBANES. And denies everybody else.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I thank the Chair.

I think I have made my point.

Mr. SARBANES. No. You haven't made your point.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I would like to respond to the question of the Senator from Michigan, if he would like.

Mr. SARBANES. Will the Senator yield?

Mr. MCCAIN. I would be glad to yield, if the Senator from Michigan would be glad to yield.

Mr. SARBANES. It is a very clever trick, but you haven't made your point. There are other Members here with amendments that are very important to them which they are trying to have considered. We have been trying to process those amendments in an orderly way. The Senator arrives on the scene and apparently thinks, well, there should be a special set of rules for the Senator to do his amendment. So he just now tried to jump ahead of other people, and a reasonable objection was made. And I think it ought to have been made. The Senator from Arizona comes in, and, all of a sudden, there is going to be a special set of rules to deal with his amendment. The Senator doesn't even recognize what is in the bill, which does try to address to some extent this problem with independent funding and FASB that this legislation provides for—which everyone agrees is long overdue and is an important contribution.

But we have these people lined up here who want to do amendments. We have the Edwards amendment, we have the Levin amendment, and we have a whole list of people with amendments. We have been trying to process those amendments, and we have not been able to do it.

As one who is down here trying to work overtime to get these amendments processed, I want to very strongly register that point.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I still have the floor. I thank the Senator from Maryland. I appreciate his hard work managing the legislation. I have managed bills in my time. I know that sometimes it gets very frustrating and difficult.

I have some suggestions. One is that the Senator oppose cloture so that we can address all of these issues and prevail on his colleagues to do so so that we can have relevant amendments considered.

I also think—it is not just in this Senator's view but in the view of almost everyone, in the view of Alan Greenspan, in the view of Warren Buffett, in the view of the Washington Post and the New York Times, and everybody—that this is a serious and vital issue.

So my suggestion is that we not have a cloture vote, and that we go ahead and take up the amendments in an orderly fashion. The Senator from Nevada, obviously, will not allow my amendment to be considered postcloture.

The Senator from Michigan has a question. Would the Senator from Nevada, the distinguished whip, like to wait until the Senator from Michigan is finished, or would you like to go ahead?

Mr. LEVIN. My question was actually touched upon by the Senator from Arizona relative to the independence of the Financial Accounting Standards Board, and as to whether or not the Senator was aware—at least now in this bill—that we have the source of financing for that board which hopefully will not only allow it to reach its own conclusion, as it did once before, that options have value and should be expensed but also that it carry through with it without threatening their own survival.

I think that is an important part of this. But at least that gives us hope this time that when the Financial Accounting Standards Board reviews this matter—if it does—it will reach a conclusion not only that it believes it, but it can then implement it through an accounting standard.

That was my question about that funding source in this bill.

Mr. MCCAIN. I would like to respond. I understand that. I did know it is part of the bill. I also know what has happened in the past. The fact is that we have not made the changes which are necessary because of enormous pressures that have been brought to bear.

The Senate should be on record on this issue. This is not a minor issue. This is not a small item. The Senate should be on record on this issue, and it apparently will not be at this time.

I thank my colleagues, though I do think that it is an important step forward. But I also believe this is something that we could address in a straightforward fashion.

Mr. LEVIN. Mr. President, will my colleague yield for 60 seconds so I can make a statement on this subject prior to a unanimous consent, or an address on a different part of my amendment?

Mr. MCCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank Senator McCain for his steadfast support of the issue which is critically important.

Unless we address the way stock options are dealt with in this country—the fact that it is now a free ride, and stealth compensation which has caused, in large measure, the problems because accepted accounting practices, as we have seen, are significantly driven by the option accounting which allows options to be left off the financial statements as an expense, and, therefore, cashed in when those books of the company show great value, which is not reality, but nonetheless drives up stock prices—I want to say that I agree with the Senator from Arizona. Unless we address this issue, we are leaving a huge gap in our reform efforts.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Maryland has tried now for several days to figure out a way to have amendments. We have tried to negotiate. We have had those which have been arbitrated. We have had some cajoling. We have had a little bit of begging. We have gotten nowhere. But the rules of the Senate are the rules of the Senate. Therefore, it would be contrary to my beliefs to have a special set of rules for the Senator from Arizona, as well intentioned as his amendment may be.

I have had phone calls. I have had personal visits from at least 15 Democratic Senators saying they have amendments that they believe in very strongly. They and their staffs have worked on some

of these amendments for months. They are not going to be able to offer those amendments.

Mr. GRAMM. There are 58 Democratic amendments.

Mr. REID. So it would be totally unfair to have a nongermane amendment that would be available for us postcloture. That is why I object. If I had to do it again, I would do the same thing.

But let me say this. People can complain—and I have no problem with their doing so—that we have not been able to go through the relevant amendments, but this legislation that has been brought to us by the Banking Committee and has now been improved upon by the Judiciary Committee's amendment of Senator Leahy is a very fine piece of legislation.

Let's not lose track of that. This is a very fine vehicle. Maybe we could do a better job—put some rearview mirrors on both sides of it, maybe improve the upholstery a little bit, but the legislation we have that will be voted on and approved by the Senate is very good.

The Public Company Accounting Reform and Investor Protection Agent would establish the Public Company Accounting Oversight Board to set standards for auditing public companies.

It would inspect accounting firms. It would conduct investigations into possible violations of its rules and impose a full range of sanctions. It would restrict the nonaudit services a public accounting firm may provide to its clients that are public in nature. It would require a public accounting firm to rotate its lead partner and review partner on audits after 5 consecutive years of auditing a public company.

It would require chief executive officers and chief financial officers to certify the accuracy of financial statements and disclosures. It would require CEOs and CFOs to relinquish bonuses and other incentive-based compensation and profit on stock sales in the event of accounting restatements resulting from fraudulent noncompliance with Securities and Exchange Commission financial reporting requirements.

It would prohibit directors and executive officers from trading company stock during blackout periods. It would require scheduled disclosures of adjustment statements. It would establish bright-line boundaries to prohibit stock analyst conflicts of interest.

It would authorize about $300 million more than the President's budget for the SEC next year to enhance its investigation and enforcement capabilities.

I will not go through all the details of the amendment that has been approved by the Senate, offered by Senator Leahy, making certain things criminal in nature and increasing the penalties.

This is a fine piece of legislation. But I do say this. The Senator from Maryland is in the Chamber. I am confident the Senator from Maryland would agree to a unanimous consent request that on relevant amendments, determined by the Parliamentarian, we have a half hour on each one, and as soon as the half hour is up, vote on them.

I ask the Senator from Maryland, you would agree to that, wouldn't you?

Mr. SARBANES. It would be one way of trying to deal with these amendments and dispose of them. A request of that sort ought to be carefully considered, certainly.

We have this problem. Members have amendments pending. We have been trying to move the amendments forward. We have not been able to do that. I know how frustrated they are. I share their frustration.

(Mrs. CARNAHAN assumed the chair.)

Mr. REID. But in spite of all this, I want the RECORD to be spread with the fact that we have a good piece of legislation. I would like, as I said before, to have some of the fancier upholstery——

Mr. SARBANES. If the Senator will yield, it is interesting, in the debate we just had, until the Senator from Michigan underscored the fact, it was not pointed out that we provide independent funding in this legislation for the Financial Accounting Standards Board, which has the responsibility of setting these accounting standards.

Their problem in the past has been that they are voluntarily funded from the industry. They have to go to them and beg for money in order to carry out their activities. And if the industry thinks they are going to do a ruling that is contrary to what they want, then they are not as willing to support their activity.

We eliminate that in this bill because we have a mandatory fee that must be paid by all issuers, and the Board will be funded out of that money. So that, in itself, is a very important and significant step in establishing the independence of the Accounting Standards Board.

Mr. REID. Madam President, I have spoken with the Presiding Officer and staff on several occasions. Yours is our next amendment in order. You have been waiting 2 days to have that amendment offered, a very important amendment. And you are just one of several. You are fortunate in that you are the next one, if we can ever get to the next one.

I would ask my friend——

Mr. GRAMM. I have the next Republican amendment.

Mr. REID. We know we have to be burdened with a Republican amendment once in a while.

I say to my friend, would the Senator consider my proposal to have relevant amendments debated—and the relevancy would be determined by the Chair—for a half hour on each one of those and, at the end of the half hour, have a vote up-or-down on that amendment?

Mr. GRAMM. The Senator is already in a big fight with Senator McCain. I do not know why he wants to try to pick one with other people.

Where we are is, we are going to cloture. And there are rules in the Senate. And postcloture, for an amendment, the ticket to get into the arena is it has to be germane, which means it must be directly related to a provision in the bill. It cannot amend the bill in more than one place. There is a certain set of rules.

If the Senator would indulge me a second, we have 36 Republicans who want to offer an amendment. My amendment is next on the list. I am the ranking member of this committee, and it appears I am not going to get an opportunity to offer an amendment. Now, I could cry and pout about it, but it would not change anything and would not change the world either. There are 58 Democrat amendments.

The point is, we all agree on one thing: Whether you like this bill or you do not like it, it is an important bill and we need to get on with it. We need to pass it. We need to go to conference. We need to work out an agreement with the House and with the White House. If we sat here and tried to do 36 Republican amendments and 58 Democrat amendments—and some of them having to do with things such as the Ninth Circuit Court of Appeals and bankruptcy law—we would literally spend 3 or 4 months. So there is no other alternative than following the rules of the Senate. And that is exactly what I want to do.

Mr. REID. Reclaiming the floor, I have always enjoyed the Texas drawl of my friend, the senior Senator from Texas. But even through the drawl, I understood that to be a no.

Mr. GRAMM. Yes. Yes, it was a no.

Mr. REID. My friend, the other Senator from Arizona, is on the floor. We are waiting for the Republican leader. I assume that will be soon.

I ask my friend from Wyoming, when the Republican leader does appear, if he would be kind enough to allow us to attempt to enter into an agreement.

I ask the Senator, if you see him come to the floor, would you be so kind as to yield the floor for just a short time? It would be appreciated.

Mr. ENZI. I would be happy to interrupt my remarks at that time. I would hope my remarks would appear as uninterrupted.

Mr. REID. I would agree.

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, FRIDAY, JULY 12, 2002, NUMBER 94, PAGES [S6683–S6685]

Public Company Accounting Reform and Investor Protection Act of 2002

The ACTING PRESIDENT PRO TEMPORE. Under the previous order, the Senate will now resume consideration of S. 2673, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Daschle (for Levin) amendment No. 4269 (to amendment No. 4187), to address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits.

McCain motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs with instructions to report back forthwith with amendment No. 4270, to require publicly traded companies to record and treat stock options as expenses when granted for purposes of their income statements.

Reid (for Edwards) amendment No. 4271 (to the instructions of the motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs), to address rules of professional responsibility for attorneys.

Reid (for Levin) amendment No. 4272 (to amendment No. 4271), to address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits.

The ACTING PRESIDENT PRO TEMPORE. Under the previous order, the time until 9:30 a.m. shall be equally divided between the two managers for debate only. Who yields time?

The Senator from Maryland.

Mr. SARBANES. Madam President, I understand there will be about 5 minutes allotted each manager now. Is that correct?

The ACTING PRESIDENT PRO TEMPORE. The Senator is correct.

Mr. SARBANES. Madam President, very shortly we will be voting on a cloture petition with respect to this legislation, S. 2673. I urge my colleagues to vote for the cloture motion.

I know there are a lot of amendments pending, but we have now been on this legislation a full week. Even with the voting of cloture today, this matter will carry over into next week. There have been a range of amendments, some that are pending that are germane under cloture to the bill. In other words, they have been drawn in a way and the subject matter is focused and limited enough that they remain germane even after cloture.

There are a number of amendments that are relevant to the bill but not germane. Once cloture is invoked, they will fall. I know that is a matter of some concern to those who are proposing those amendments, but I do not know how we can handle this differently and move along towards a resolution.

In addition to those relevant amendments—and I have sympathy there because while they may not meet the very narrow definition of germaneness, they do touch the subject matter of the legislation—there are also amendments that are not even relevant to the bill that are sort of—I was going to say floating around, but it would be more accurate to say they are sort of present. They touch matters that have nothing to do with this legislation.

I am frank to say to my colleagues, I do not see how we can progress and move towards a final vote and resolution on this issue without invoking cloture this morning. We tried not to precipitate that early on, although I know people were then blocked from getting votes, and I regret that. I was concerned, as anyone, to get the votes and give people a chance to have their amendments considered. Nevertheless, we are now where we are, and I urge my colleagues to vote for cloture.

We have to move forward on this legislation. This is important legislation. I think the committee and my colleagues have fashioned legislation which will make a very important contribution toward addressing the serious economic challenge now confronting the country and this loss of confidence in the workings of our economic system. The fact that people cannot have any trust in or reliance on the basic financial information upon which they make important economic decisions is having a major impact on the workings of the economy and carries with it the very real potential of having an even more significant impact.

This is serious business, and the potential for an economic downturn, triggered in part by the difficulties we are trying to address in this legislation, I think is not insignificant. So I think it is important that we move forward and pass this legislation. This is but one step along the way, and there are many steps left yet to be done.

I am hopeful at some point the administration will come to see the necessity of putting into place a statutory framework to provide for an independent oversight board with respect to the accounting industry, to address the conflict that exists on the part of auditors when they are the auditor of a company and at the same time are providing certain consulting services to the company which carry with them an inherent conflict of interest with their responsibilities as an auditor.

There are extensive provisions in this bill with respect to corporate responsibility and accountability with respect to corporate disclosure and, of course, with respect to the conflict of interest we

have seen manifest with respect to stock analysts who are often in the position of giving buy recommendations on the stock of a company with which the analyst's company is also having investment banking deals which, of course, raises the question: Is the recommendation on the stock being done in order to gain the investment banking business? So we try to provide some, as they call them, Chinese walls between those two sides of the company in order to reduce the degree of that conflict.

Furthermore, this has a very significant authorization of additional monies for the SEC in order to be able to meet its responsibilities, which I think is very important. The President asked the other day in his address for another $100 million. That is not sufficient. We have to do better than that so the SEC can do its job.

So we can move forward, I urge my colleagues to support the cloture motion which will be before us for a vote at 9:30.

I presume I have used my time, and I yield the floor so my colleague, the ranking Republican Member, may use his time.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. Madam President, we need to pass a bill. We are going to conference with a House bill that is substantially different from this bill. I believe that between the two bills, we can find a virtually unanimous vote. I think we can write a bill that will satisfy the President and both Houses of Congress. I do not think we are making the bill better. The amendments that are being offered now are largely nongermane. We have gotten into sort of a one-upmanship position, and I think we are harming the markets by convincing people that the cure may very well be worse than the disease.

It is very important that we get on with our business and that we pass this bill. I intend to vote for it today. I do not think it is the bill we need in the end, but it gets us to conference where we can get the bill we need in the end. I urge my Republican colleagues to vote for it, not because in the end they are for this version but because they want to do something. We need to bring this debate to a close. We do have some germane amendments. We will be dealing with those, but the time has come to get on about our business. Getting on about our business means bringing this debate to a close.

So I urge my colleagues to vote to end the debate. Let us go to conference. Let us write this bill. Let us let it be known with certainty what our policy is going to be. If we do that, it will help restore confidence in the country. So I urge my colleagues to vote for cloture and, as we get to the end of the process, for the bill.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. I do not know if the manager has any time.

Mr. SARBANES. Do I have any time remaining?

The ACTING PRESIDENT pro tempore. The manager has no time.

Mr. LEVIN. Madam President, I ask unanimous consent that I be allowed to proceed until 9:30 when cloture is invoked.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEVIN. Madam President, a number of amendments have been pending where we have been unable to get a vote. These are highly relevant amendments, including mine which would have given the SEC administrative powers to impose civil fines.

The Republican manager said the amendments were not particularly relevant. Well, we had a highly relevant amendment that goes directly to the issue of abuses by corporate officers and corporate directors. The current fine structure of the SEC does not reach officers and does not reach directors, except by going to court. They have no administrative authority in the SEC to impose civil fines, the way they do with brokers and the way a lot of other agencies that regulate business have authority to do. The SEC does not have the power to impose administrative fines on directors and on officers of corporations. They should have that power administratively.

We were blocked in getting a vote, and the amendment which is pending is going to fall if cloture is invoked. That is the use of the rules. But let it be clear what the rules were used to do, which was to prevent a strengthening amendment for this bill.

It is a good bill. I compliment the sponsors of this bill. I compliment Senator Sarbanes and his cosponsors that this bill can be strengthened; it should be strengthened. One of the strengthening amendments was blocked from getting to a vote yesterday and will fall if cloture is invoked.

We also have a question. What about postcloture? There are 48 germane or arguably germane amendments. The question is whether or not the rules are going to be used again to block votes on germane amendments. I will object to that happening. I will do everything I can to make sure germane amendments, including some that I have filed, are considered postcloture.

I thank the manager for yielding. I yield the floor.

CLOTURE MOTION

The ACTING PRESIDENT PRO TEMPORE. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 442, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002:

Jon Corzine, Deborah Stabenow, Paul Wellstone, Ron Wyden, Daniel Akaka, Barbara Boxer, Charles Schumer, Byron Dorgan, Harry Reid, Paul Sarbanes, Daniel Inouye, John Edwards, Barbara Mikulski, Thomas Carper, Jack Reed, Tim Johnson.

The ACTING PRESIDENT PRO TEMPORE. By unanimous consent, the mandatory quorum has been waived.

The question is, Is it the sense of the Senate that debate on S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. Inouye), the Senator from Massachusetts (Mr. Kerry), and the Senator from Louisiana (Ms. Landrieu) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), the Senator from Ohio (Mr. Volinovich), the Senator from Idaho (Mr. Crapo), and the Senator from Virginia (Mr. Warner) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 91, nays 2, as follows:

[Rollcall Vote No. 173 Leg.]

Yeas—91: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Craig, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Jeffords, Johnson, Kennedy, Kohl, Kyl, Leahy, Lieberman, Lincoln, Lott, Lugar, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Wellstone, Wyden

Nays—2: Levin, McCain

Not Voting—7: Crapo, Helms, Inouye, Kerry, Landrieu, Voinovich, Warner

The PRESIDING OFFICER (Mr. CARPER). On this vote, the yeas are 91, the nays are 2. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The pending motion to recommit is out of order.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate is not in order. The Senate will be in order. The Senate is not in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, we can have order in the Senate with Senators in their seats. At least they do not need to be cluttering up the well. I want to say a few words.

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I have the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, FRIDAY, JULY 12, 2002, NUMBER 94, PAGES [S6687–S8700]

Public Company Accounting and Investor Protection Act of 2002—Continued

Mr. REID. Mr. President, will the Chair inform us what the matter before the Senate now is?

The PRESIDING OFFICER. The Daschle second-degree amendment to the Edwards first-degree amendment.

Mr. REID. That is Daschle for Levin; is that not right?

The PRESIDING OFFICER. That is correct.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I raise a point of order that the pending second-degree amendment is not germane to the bill postcloture.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

The deputy majority leader.

AMENDMENT NO. 4286, AS MODIFIED, TO AMENDMENT NO. 4187

Mr. REID. I call up amendment No. 4286, and I ask unanimous consent that Carnahan amendment No. 4286 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mrs. Carnahan, for herself, Mr. Dodd, Mr. Durbin, Mr. Levin, Mr. Harkin, and Mr. Corzine, proposes an amendment numbered 4286, as modified, to amendment No. 4187.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require timely and public disclosure of transactions involving management and principal stockholders)

At the end of the amendment, insert the following:

(b) ELECTRONIC FILING.—Notwithstanding the provisions of section 403 of this Act, section 16(a)(2) of the Securities and Exchange Act of 1934, as added by section 403, is amended to read as follows:

"(2) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of

the Gramm-Leach-Bliley Act) involving such equity security, shall file electronically with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement before the end of the second business day following the day on which the subject transaction has been executed, or at such other times as the Commission shall establish, by rule, in any case in which the Commission determines that such 2 day period is not feasible, and the Commission shall provide that statement on a publicly accessible Internet site not later than the end of the business day following that filing, and the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website not later than the end of the business day following that filing (the requirements of this paragraph with respect to electronic filing and providing the statement on a corporate website shall take effect 1 year after the date of enactment of this paragraph), indicating ownership by that person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under this paragraph.".

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. CARNAHAN. Mr. President, I am offering this amendment on behalf of myself and Senators Dodd, Dubbin, Levin, Harkin, and Corzine.

The Senate is engaged in an important debate about how to improve our Nation's financial system. Today I am offering an amendment that is intended to provide more timely information to average investors. America has the most vibrant and dynamic economy in the world. Our robust and resilient capital markets are the foundation of our economy. But the success of those markets depends on the free flow of accurate, reliable information.

Recent disclosures about the inaccuracy of some companies' financial reports have shaken that confidence. I am pleased the Senate has acted quickly to take up this important reform legislation. I believe that this bill makes tremendous progress in improving the quality of information available to the markets. In the interest of further improvement, I am offering an amendment to modernize the method of disclosure required when insiders trade in their own companies' stock.

One warning sign that a company may be in trouble is when its executives are selling large amounts of company stock, as occurred at Enron. I have learned, however, that information about insider selling is not easily accessible.

Under our current system a company's officers are required to file a disclosure form with the Securities and Exchange Commission, SEC, any time they sell securities of their company. Tens of thousands of these forms are filed annually. These are not complicated forms. I have a copy here. It is a simple 2-page form.

The Office of Management and Budget estimates that the form should not take more than 30 minutes to fill out. With capital markets as sophisticated as they are in the U.S., information must be available quickly to be useful. However, insiders currently have up to six weeks to file their disclosure forms. And the overwhelming majority of these forms—95 percent—are filed on paper, rather than electronically.

The Banking Committee has already addressed the issue of timely disclosure. This legislation would require disclosure of sales within 2 days, a vast improvement over the current deadlines. However, this legislation is silent on the issue of modernizing this arcane paper filing system.

Right now, there is no way for an investor in Missouri to quickly learn that a company executive is selling off company stock. The only ways to get the information are to go to a reading room at the SEC in Washington, or to write a letter to the SEC. These written requests may take weeks to process. This is unacceptable in the electronic age.

My amendment requires that information about insider sales of publicly traded companies be filed electronically. The SEC would then be required to make the forms available to the public over the Internet. Any company that maintains a corporate Web site would be required to post these disclosure forms on the Web site. The SEC, itself, has acknowledged the value of having these forms filed electronically.

I have here a letter from SEC Chairman, Harvey Pitt. He wrote to me that "expedited disclosure of trading by company insiders is imperative." In fact, he applauded the legislation I introduced earlier this year that requires electronic disclosure.

I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 1, 2002.

HON. JEAN CARNAHAN,
U.S. Senate, Hart Office Building,
Washington, DC.

DEAR SENATOR CARNAHAN: Thank you for your February 14th letter regarding S. 1897, the Fully Informed Investor Act which you recently introduced. I share your concerns about the issues regarding reporting of insiders' securities transactions that your bill addresses. As we announced on February 13th, the Commission will shortly propose rules that would provide accelerated reporting by companies of insider transactions in public company securities. This is an integral part of our effort to supplement the periodic disclosure system with "current disclosure" in order to put information investors want and need into their hands more promptly.

I also share the view reflected in your bill that expedited electronic disclosure of trading by company insiders is imperative, and I applaud your initiative. As you know, the Securities Exchange Act of 1934, rather than rules adopted by the Commission, sets the deadlines for officers, directors and beneficial owners of ten percent of a class of equity securities of a public company to report their trading in those securities. A legislative solution, therefore, will be necessary to address fully the issue of investors' timely access to information about insiders' securities transactions.

While formal Commission comment on legislation is normally reserved for testimony or a response to a request from a committee or subcommittee given jurisdiction over the bill, we would welcome the opportunity to provide you with technical assistance on your bill if you would find that helpful. I have asked Casey Carter, the Director of our Office of Legislative Affairs, to contact your staff to see if you would like our assistance. Please feel free to call me or to have your staff call Ms. Carter at (202) 942-0019 if you have any questions.

Yours truly,

HARVEY L. PITT.

Mrs. CARNAHAN. This is not a new idea. In fact, more than 2 years ago, in April 2000, the SEC published a rulemaking for its electronic data system. In that rulemaking, the SEC indicated that it "anticipated" making insiders file disclosure forms electronically. I applaud the SEC for recognizing the need to modernize, but I am frustrated by the delay. It has been over 2 years since the SEC made this proposal.

An agency that is responsible for monitoring markets where trillions of dollars are electronically exchanged ought to be able to develop a fairly simple electronic database to make this information available.

The Senate now has the opportunity to require the SEC to move quickly. I am very pleased that the bill I introduced earlier this year on this subject was included in the House accounting reform bill. The House has required that insiders file electronically, within one day of their transactions. The House has also required that corporations disclose insider sales on their corporate Web sites.

I encourage my colleagues to support my amendment. We should not make investors wait any longer for these basic reforms.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have an amendment at the desk.

Mr. DODD. Mr. President, I ask to be heard on the Carnahan amendment very briefly. Does the Senator mind?

Mr. DORGAN. How briefly?

Mr. DODD. Two minutes or so.

Mr. DORGAN. I am happy to yield to the Senator from Connecticut, provided that I am recognized following his presentation.

Mr. DODD. I appreciate that.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I commend my colleague from Missouri for this very fine amendment. I think it is going to make a strong difference by improving electronic reporting. It doesn't get the kind of attention it should.

This is a positive and constructive suggestion. I am a cosponsor of the amendment and commend the distinguished Senator from Missouri for offering the amendment. It makes the bill stronger. It is something all our colleagues will be willing to support. I commend the Senator for her work.

AMENDMENT NO. 4215, AS MODIFIED

Mr. DORGAN. Mr. President, I have an amendment numbered 4215 at the desk. I have submitted a modification of that amendment which I believe has been reviewed by both sides. I ask for its immediate consideration and I ask unanimous consent that the amendment be modified.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment of the Senator from Missouri?

Mr. SARBANES. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. SARBANES. Is this the amendment that deals with the offshore companies?

Mr. DORGAN. Yes.

Mr. SARBANES. I have no objection to setting aside the pending amendments in order to consider this amendment. I understand upon the conclusion of the consideration of this amendment we will revert to the Edwards-Carnahan amendment

Mr. SCHUMER. Reserving the right to object, I believe I have two amendments that have been cleared by both sides. I would like to offer them immediately after the Senator from North Dakota.

Mr. SARBANES. We are hoping to get to the Senator from New York. I make a unanimous consent request that following the disposition of the amendment of the Senator from North Dakota, we turn to the amendments referred to by the Senator from New York.

Mr. ENSIGN. Provided that no second-degree amendments are in order to any of the three amendments.

Mr. SARBANES. Furthermore, upon conclusion of the consideration of the Schumer amendments, we return to the regular order, which I take it would be the Edwards-Carnahan amendment.

Mr. REID. Reserving the right to object, Senator Schumer has a number of amendments on the list. I think we better get numbers of those amendments before there is an agreement they be next in order.

Mr. SARBANES. Let us withdraw the unanimous consent request and make it only that Senator Schumer be recognized after the disposition of the Dorgan amendment and we can address those questions.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Reserving the right to object, just to make sure we have this clarified, the unanimous consent request is just to the Dorgan amendment pending, and we would not object as long as the second-degree amendment is not in order to his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, first of all I will offer an amendment that I believe will be accepted. I understand the process is that those who have amendments that will be accepted will be allowed to offer them and those whose amendments are not approved by both sides will not be allowed to offer them. In my judgment, this is not the kind of procedure we ought to use when considering this legislation. But I understand the Senator from Texas indicated he will object to setting aside or laying aside an amendment for the purpose of offering another first-degree amendment unless he agrees with the amendment. I will talk a little bit more about that in a couple of minutes.

I had asked unanimous consent my amendment be modified. Was the consent agreed?

The PRESIDING OFFICER. It was agreed to.

Mr. DORGAN. Is amendment No. 4215 called up at this point?

The PRESIDING OFFICER. The pending amendment is set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. Dorgan], for himself and Mr. Graham of Florida, proposes an amendment numbered 4215, as modified.

Mr. DORGAN. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify that the requirement that certain officers certify financial reports applies to domestic and foreign issuers)

On page 82, after line 24, insert the following:

(c) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincor-

porated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

Mr. DORGAN. Let me describe what this amendment is briefly. There was a Wall Street Journal article on July 8 this week titled: "Offshore-based Firm's Officials Won't Have to Swear to Results."

The Securities and Exchange Commission's new order requiring chief executives and chief financial officers of the Nation's biggest companies to swear to the accuracy of their financial results was intended to restore investors' battered confidence. But two of the companies that have promised the biggest concerns don't have to comply.

Why? Because Tyco International Ltd. and Global Crossing Ltd. are based in Bermuda, even though they conduct many of their operations and have main office in the United States and are listed on the U.S. stock exchanges.

Securities and Exchange Commission spokesmen said large foreign-domiciled companies over which the SEC has jurisdiction, such as and Global Crossing and Tyco, were excluded from the list because the agency wanted to issue the order "very quickly." Therefore it focused only on U.S. companies.

So the Securities and Exchange Commission says that the chief executives and chief financial officers of some of the biggest companies must swear to the accuracy of their financial results. But in recent times, we have had U.S. corporations decide that they want to renounce their American citizenship and they want to become citizens, for example, of Bermuda. That is called a corporate inversion. They have essentially renounced their American citizenship, saying we are now corporate citizens of another country.

Guess what? Under the SEC order, they are rewarded for leaving the United States, in that their chief executives no longer have to certify financial results. The SEC says: We had to get this done quickly, and we don't expect to change it at this point.

Why does a company renounce its U.S. citizenship? They do it because they don't want to pay U.S. taxes. Very simple. If they can become a citizen of another country and renounce their U.S. citizenship, they can save substantial money on their U.S. tax bill.

At a time when we are at war with terrorists, is that a patriotic thing to do? No, I don't think so. I hope the Senate, and I certainly encourage my colleagues to do this, will shut that door tight and stop these corporate inversions. Stop these corporations from creating a sham of renouncing their U.S. citizenship in order to avoid paying U.S. taxes.

It might be interesting to ask companies such as Tyco: If you get yourself in trouble someplace around the world, who are you going to call? The Bermuda navy? The Bermuda army? The Bermuda marines? You want the full protection of the U.S. Government and the U.S. military and all the benefits that being a U.S. citizen brings along. But then you want to renounce your citizenship and move to Bermuda, in a technical sense, while keeping your offices in the United States and saving big money on taxes. And then, under the SEC order, you don't even have to have your chief executive officers certify the financial results of the corporation.

That is a shame. The SEC should know better. What could they have been thinking? I have accused them of sleeping, but this is not sleeping; this is making really dumb decisions.

I have discussed my concern with the staff of the Banking Committee. They believe that their bill implicitly addresses the reincorporation problem. But Senator Graham of Florida and I said we are

not satisfied with "implicitly" being covered. We want the issue addressed explicitly.

Let me also say, the technical people smile when I talk about this, but, frankly, it took a day and a half for us to evaluate whether it was implicitly covered in the bill. So because of that, I think it is important to have an explicit provision in this bill that says those companies involved in inversions that renounce their citizenship, they, too, will be required to certify their results. Their chief executive officers and their CFOs will be required to certify their results.

In a moment I will conclude and ask that this amendment be attached to the bill. As I do that, I ask for the attention of the Senator from Maryland and the manager on the other side to say that I have another amendment that I will offer. I understand, based on your process, you don't want it offered now. Let me describe it briefly.

The other amendment deals with the issue of what is called disgorgement of profits.

The top executives of these corporations make bonuses, commissions, and a substantial amount of compensation—some of them hundreds of millions of dollars. Then they issue a restatement of earnings and everything collapses. But they keep their profits and they keep their commissions and they keep their bonuses.

This legislation says you can't do that. When you restate, and just prior to restatement you have made all these bonuses, you have to disgorge this money. It is a $2 word, but I think everybody understands what it means.

The thing that is missing in this bill is that disgorgement should be required in cases of bankruptcy as well. So I have an amendment that will say: Yes, disgorgement in this bill with respect to periods prior to restatement, but also disgorgement for the 12 months prior to the filing of bankruptcy by a corporation as well.

A fair number of people have had a lot to say about this. Former SEC Chairman, Richard Breeden, who was the Chairman of the SEC under President H.W. Bush from 1989 to 1993, said:

> We should consider disgorgement to the company of any net proceeds of stock sales or option exercises within a 6-month or a 1-year period prior to a bankruptcy filing.

So he feels that way.

Goldman Sachs CEO Henry Paulson has also spoken in favor of this idea.

This bill will be incomplete if it does not include disgorgement in the period prior to bankruptcy. Those making a fortune, getting bonuses and commissions of tens of millions, yes hundreds of millions, as their companies are headed to bankruptcy—that is unfair. We need to do something about this.

I will not ask consent at the moment because I want to get my first amendment approved, but I will, following some discussions, either this morning or else on Monday, ask consent to set aside the second-degree amendment so we can consider, in first-degree, this issue. My hope is we would have a 100-to-0 vote on this matter because, failing that, this bill will be incomplete.

This bill is a great bill. I have credited Senator Sarbanes and others at length. This is a wonderful piece of legislation that I fully

support. It can be and will be improved by my amendments and by the amendments of Senator Schumer and others. Let's complete this amendment process.

Let me just say one last thing, if I might.

I know it has taken the patience of Job to try to manage this bill on the floor of the Senate. I understand all the difficulties that Senator Sarbanes and Senator Reid and many others have had these recent days because I have been here every day when this bill has been on the floor. My aggressiveness in trying to get these amendments considered has nothing at all to do with the wonderful stewardship of the chairman. I am very proud of the result he brings to the floor, and I believe both of my amendments will improve it. I hope I can work with him from now until Monday afternoon to have the bankruptcy amendment included in this legislation.

Mr. SARBANES. Will the Senator yield for just a moment?

Mr. DORGAN. I will be happy to yield.

Mr. SARBANES. Madam President, I simply want to say I think the subject matter with which the Senator's other amendment, that he just referred to, deals is a very important subject, and I think his observations are very much on point. Working with the other side, we are trying to work through the amendment. We are in the process of trying to do that. Of course, we will be continuing to talk with the Senator, and I hope we can resolve it. It would be very helpful. I appreciate his kind words.

Mr. DORGAN. I thank the Senator from Maryland. I ask my amendment be considered at this point and be voted upon.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 4215, as modified.

The amendment, (No. 4215), as modified, was agreed to.

Mr. SARBANES. I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (MRS. CLINTON). The Senator from New York.

AMENDMENT NO. 4295

Mr. SCHUMER. I ask unanimous consent the Carnahan amendment be laid aside, and I send an amendment to the desk which we have talked about.

Mr. SARBANES. Will the Senator describe the amendment?

Mr. SCHUMER. Yes. This amendment is the amendment that enhances the conflict of interest provisions by prohibiting personal loans by issuers to chief officers of the issuer. It has been agreed to by both sides.

Mr. SARBANES. I ask unanimous consent no second-degree amendment to the Schumer amendment, when it is sent to the desk, be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to laying aside the pending amendment for purposes of ending up a new amendment? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. Schumer) proposes an amendment No. 4295.

Mr. SCHUMER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To enhance conflict of interest provisions by prohibiting personal loans by issuers to chief officers of the issue)

On page 91, strike line 19 and all that follows through page 93, line 22 and insert the following:

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

"(1) IN GENERAL.—It shall be unlawful for any issuer, directly or indirectly, to extend or maintain credit, or arrange for the extension of credit, in the form of personal loan to or for any director or executive officer (or equivalent thereof) of that issuer.

"(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in Section 5 of the Home Owners Loan Act, consumer credit (as defined in section 103 of the truth in lending act), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), that is——

"(A) made in the ordinary course of the consumer credit business of such issuer;

"(B) of a type that is generally made available by such issuer to the public; and

"(C) made by such issue on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such loans.".

Mr. SCHUMER. Madam President, I also ask unanimous consent that Senator Feinstein be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Madam President, I am going to be very brief because I know we do not have too much time and we have other business. I thank both the majority and minority managers, Senator Sarbanes and Senator Gramm, for their work on this amendment. I have also spoken to the people in the White House who were supportive of this amendment. It is a very simple amendment. It basically says that with certain narrow exceptions, CEOs and CFOs of companies will not be able to get loans from those companies.

In his speech before Wall Street yesterday, President Bush forcefully stated: ". . . I challenge compensation committees to put an end to all company loans to corporate officers."

I couldn't agree more. It seems like we didn't learn our lessons during the S&L crisis in the 1980's? These same kinds of transactions were used then to "cook the books" and our Nation's economy and financial institutions paid the price for it. Once again, history repeats itself.

My amendment is very simple: it makes it unlawful for any publicly traded company to make loans to its executive officers. Let me give a few examples as to why we should do this.

Executives of major corporations, including Enron, WorldCom, and Adelphia, collectively received more than $5 billion in company funds in the form of personal loans. For example, Bernard Ebbers, CEO of WorldCom, borrowed a mind-boggling $408 million from the corporation over several years, while receiving a compensation package valued at over $10 million annually, all the while the com-

pany was facing massive losses. In the case of Adelphia, the Rigas Family received loans and other financial benefits totaling a staggering $3.1 billion, while that company has also reported huge financial losses.

The question is: Why can't these super rich corporate executives go to the corner bank, the Suntrust's or Bank of America's, like everyone else to take loans?

In the case of WorldCom, Ebbers had funded his personal stock market activities by borrowing on margin. When the value of those investments plunged, Ebbers had to pay up. How did he do it? He borrowed money from his board of directors to pay for the stock he had bought that was now being called in.

This is just wrong, and it must be stopped.

I urge the amendment be agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 4295) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4296

Mr. SCHUMER. I have a second amendment that has also been agreed to, so I ask, again, the Carnahan amendment be laid aside, and I send the amendment to the desk and ask for its consideration. I ask unanimous consent Senator Shelby be added as a cosponsor on this amendment on the SPEs.

Mr. SARBANES. I ask unanimous consent no second-degree amendment be in order to the Schumer amendment being sent to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there objection to laying aside the pending amendments for the purpose of introducing a new amendment? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. Schumer), for himself and Mr. Shelby, proposes an amendment numbered 4296.

Mr. SCHUMER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require a study of the accounting treatment of special purpose entities)

On page 91, between lines 18 and 19, insert the following:

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.——

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine——

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of

the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

Mr. SCHUMER. Madam President, I will again be brief. This amendment relates to a second problem that we have seen in the latest crisis that we have faced in our financial markets, and that is the special purpose entities. Sometimes special purpose entities have a valid purpose. Many companies use them for valid purposes.

We have seen, particularly most egregiously in the case of Enron, these have been entities that have been used to take losses off the books, and then shareholders, and everybody else, don't know much about them.

Enron, for instance, conducted business through thousands of these with names such as LJM, Cayman LP, and Raptor. They become pretty famous and the Enron's former CFO, Andrew Fastow, contributed hard assets and related debt to Raptor SPE and then Raptor would turn around and borrow large sums of money from a bank to purchase assets or conduct other business.

This is the key. The debts of this SPE, Raptor, never showed up on Enron's financial statements.

People make money on it. Fastow made $30 million in management fees. These things go way overboard. The way we had proposed originally legislating on this was too complicated, but there are some good ones. There are some with legitimate purposes and many with bad purposes.

Congress can't set these accounting standards, nor should we. Rather, that is the SEC and FASB's job.

We have asked in this amendment that the SEC do a comprehensive study of the SPEs to show where the damage is, point the way to reform, and make recommendations. This amendment does not put Congress in the business of setting accounting standards.

It does, however, say to thousands of Enron and other employees who have lost pensions that we are stepping up to the plate now to stop these kinds of egregious practices.

I add that there are probably many of these SPEs for bad purposes floating around in other companies, and this study cannot come too soon.

We have received agreement. I thank Senators Sarbanes and Gramm.

I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4296) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I thank Senator Sarbanes and his staff as well as Senator Gramm and his staff for their work on accepting these two important amendments that I think improves the bill, which is a very fine bill that I am proud to support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, let me spend a few minutes talking about the underlying legislation, S. 2673.

There has been a great deal of debate over the last good number of days on this issue. I am pleased that we were able to get cloture. It is time we move on to this issue.

The American public, a good many stockholders, a good many pension plans, a good many retirement plans are discussing what are we going to do about the meltdown that last occurred in corporate America at the executive level with some key corporations. It is really, in most instances, a crisis of confidence.

There are a lot of well-run corporations across America that are publicly held. They have historically observed the prudent rules. Their boards have acted responsibly. But there are bad players. There are big, bad players that have had a dramatic impact on the markets. There is no question that we have to deal with this straight away.

When I look at the whole of this issue, it isn't just in the markets where there is a crisis of confidence that Americans share: When you look at 9/11, then Enron, then WorldCom, and, of course, all the scandals that have occurred, and out in the West with the Ninth Circuit suggesting that the Pledge of Allegiance isn't constitutional, put all of that together, and America has to be scratching its head at this moment, asking: Where does all of this take us? Where is that rock of stability that we have come to rely on for so long?

I suggest that when we are debating this issue, while this is an issue that has to be dealt with, and we are now moving appropriately, it is one of a combination of factors that is critically important for our country to deal with.

One issue we have to deal with is the war on terrorism. The DOD appropriations ought to be the first bill we deal with on the defense side to begin to shore up again this sense of confidence in the American structure. Certainly, protecting our soldiers in the post-9/11 fighting that has gone on in Afghanistan is appropriate, and now, as we search out terrorism around the world, that is critical.

The next step I would suggest is the confirming of judges. It is important that we deal with judges. For the judicial system of this country to remain strong, vacancies need to be filled. People should receive their day in court in a timely fashion. That has been one of the hallmarks and the strengths of this country throughout its history, and it ought to be today.

Clearly, I hope we appoint judges who will not act as the ones in the Ninth Circuit who suggested that the Pledge of Allegiance

is unconstitutional. I think President Bush has gone a long way in nominating good judges to the Senate.

Yet, the politics here in the Senate today is obvious: Withhold as long as you can. Withhold as long as you can.

The President spoke the other day on Wall Street relating to corporate accounting. The U.S. Senate is speaking today, as they should.

I ask unanimous consent that a commentary by Lawrence Kudlow be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, July 11, 2002]

A CLASS ABOVE THE CORRUPTION AND CRITICS

(By Lawrence Kudlow)

In front of a New York audience on Tuesday, President Bush unveiled a revised plan to counter corporate wrongdoing and accounting fraud, saying, "There can be no capitalism without conscience, no wealth without character." Adam Smith, the father of free-market economics, couldn't have said it better.

Smith always argued that smooth-functioning markets require ethical behavior at their center. From Day One of his presidency, Mr. Bush has applied this rule even more broadly, emphasizing the need for ethical clarity and moral certitude in all areas of American life. He has successfully applied the rule of ethics to the war on terror, and now he is transferring the very same principle to root out corporate corruption.

From the election campaign to today, poll after poll shows that the public believes Mr. Bush is a leader with strong character and unshakable moral principles. Following the blowups of WorldCom, Enron and Tyco—and many other rotten apples—Mr. Bush's honest outrage has been heartfelt, and not political.

It has also shone above the political carping of Tom Daschle, Al Gore, Richard Gephardt and other national Democrats who would locate the source of the contagious virus of accounting fraud and corporate corruption within the Bush administration. Theirs is a political, reckless, and silly approach to a serious situation. The bad-business bug gained strength and spread well before George W. Bush became president. And today it is a grave problem that requires sober solutions.

Serious Democrats, such as Senate Banking Committee head Paul Sarbanes and Senate Investigations Subcommittee Chairman Carl Levin, have taken a completely different tack from the business-as-usual partisan politics of the Daschle gang.

Mr. Sarbanes has crafted a significant proposal to set up an independent accounting-standards board—one that will end conflict of interests between the auditing and consulting functions, properly score stock options, create new pressure for independent boards of directors, and legislate tough legal sanctions on executives, bankers, auditors, accountants and others who violate the new standards.

The accounting system desperately needs a fix; it is even more incoherent than the dreaded tax code. A new accounting-standards board should come under the aegis of the Securities and Exchange Commission. Along with proposals from the New York Stock Exchange to create truly independent boards of directors, this action will promote honest accounting and shareholder-based corporate governance.

Meanwhile, Mr. Levin has just as seriously proposed giving the SEC, the Federal government's principal accounting overseer, the right to levy tough fines on corporate evildoers without having to go to court first.

Suburban liberals like Sens. Sarbanes and Levin, its seems, have suddenly become conservative lawmakers who will "move corporate accounting out of the shadows," as Mr. Bush rightly put it, and protect the basic workings of our wealth-creating capitalist system.

President Bush, in tune with these focused Democrats, has proposed a doubling of the maximum prison term for mail- and wire-fraud statutes from five to 10 years. This severe jail-time penalty will greatly concentrate the executive mind. And so will Mr. Bush's proposal that fraudulently earned bonuses and compensation must be returned; and so will his request that corporate officers and directors who engage in serious misconduct be barred from again sitting in corporate-leadership positions. More, if the Bush corporate doctrine moves through Congress, top executives will now have to certify their financial statements with their own signatures. False reporting could lead to jail.

It seems that our more serious men in Washington want to bolster the rue of law by strengthening the incentive to choose right from wrong.

Incentives matter. If you tax something more you get less of it. If you tax something less you get more of it. A 10-year jail term for rotten corporate apples—or their accountants—is a huge legal tax on wrongful actions.

Of course, standing behind higher ethical standards in business is the great American investor class. Covering more than 50 percent of American households and more than 80 million people, this group is positively changing financial practices and the political culture. These shareholders have lost enormous wealth, in part from dishonest accounting and egocentric corporate misdeeds. And they're furious.

Financial markets have been democratized in the past 15 years with the rise of this investor class. They have already voted to depress the stock market as a signal of their indignation, and they're now prepared to vote this November against the silly politicians who fail to realize the enormity of the current problem. Consider this: Slightly more than 60 percent of the investor class voted in the last election. This may be the most powerful lobby in America.

In no uncertain terms, this new political movement is forcing Washington to renew the rule of law, strengthen accounting and financial standards across the board, and restore a proper incentive system that will return Adam Smith's ethical epicenter to the greatest wealth-creating machine in all of history. The days of egocentric and corrupt Soviet-style corporation have come to an end. In the stock market, moral amnesia is dead.

Mr. CRAIG. Madam President, I see Chairman Sarbanes on the floor. It is not often that Lawrence Kudlow praises the chairman, but he did the other day in an op-ed and commentary that he often writes. He talked about the Sarbanes bill and said:

Serious Democrats, such as the Senate Banking Committee head Paul Sarbanes and Senate Investigations Subcommittee Chairman Carl Levin, have taken a completely different tact from the business as usual——

I will not repeat the remainder of it. But that ought to be a part of the RECORD because I think it reflects the spectrum of the thinking on the floor of the U.S. Senate at this moment. Whether you are conservative, moderate, or liberal, we know that we have to regain the confidence of the American investing public and the world investing public, and for that matter, the market systems of our country and in corporate America.

As long and as loud as many of us speak about the good corporations out there and how well run they are, the moment another Enron occurs or someone else speaks out about misdealings, that confidence is once again dashed.

This legislation moves to create a bright line between, good and bad accounting by separating auditing and consulting services for accountants in public corporations. It requires disclosure of off-balance sheet transactions and other obligations that might affect the corporate financial condition, and it establishes independent auditing boards to oversee corporate accounting.

All of those are very critical in creating bright lines of clarity, understanding, confidence, and stronger enforcement of criminal behavior.

Someone in my State said the other day: You don't have to strengthen the accounting procedure, Craig. Put the bums in jail. Those are criminal acts. When you knowingly are distorting the financial strength of a company which affects its stock, destroys retirement funds, employee's stock options, and all of that, it is, in fact, a criminal act.

Our President has said it. Others have spoken on the floor. But there is a line we have to draw. It is not one of grandstanding for

political purposes but doing the right thing, to set in place good public policy that directs the free market system in the appropriate fashion. Do we want to make it so restrictive that decisionmaking in the board room means always looking over their shoulder to see that they have done it exactly right against a Federal law when the marketplace is a dynamic place and laws are static?

We know there have to be some static lines attached. There is no doubt about it. Those have to be clear. At the same time, we cannot be so restrictive that we blight the market and send investments outside the United States to the rest of the world.

The Wall Street Journal wrote yesterday that everything you are hearing now from Washington is aimed at winning the November elections and not at calming financial markets. I hope this bill is all about calming financial markets. And I believe the majority of this bill does have that goal. Some of rhetoric may not reflect it. But I truly believe the chairman and the ranking member are working in the direction of building a substantive bill that will go to conference, that works out our differences between the House and that goes to the President's desk.

I hope the Wall Street Journal is wrong. I hope we refrain from making corporate accountability simply another political exercise. It ought not be. It has not been. It should never be.

In Idaho they say: "You can't hang the same man twice." "You can't hang the same person twice."

So let's make the laws clear, easily defined, not arbitrary, not like our tax laws today where even the best consultants cannot give good advice.

What we are working with, I hope, is clean and clear and appropriate. There are more than 16,000 corporations under the jurisdiction of the SEC. Of those, no more than a handful have been accused of criminal wrongdoing. In the end—when all the dust settles, the market stabilizes, and investors begin again to regain confidence, and the Congress has acted—no more than a handful of corporations will have been the bad actors.

So I hope and I trust we can finalize what we are doing here today, and Monday possibly. It is important. The bottom line is very simple: Congress needs to act, and act now, and reaffirm the confidence the American people have in our public institutions.

I just came from a Republican bicameral meeting between the House and the Senate Republican leaders. They said: Get us the bill immediately. Assign conferees. Let's go to work. Let's get this out before the August recess.

Let's send a message to the American and the world investor that we have acted timely, that we have acted responsibly. The President has laid down his marker. The House has laid down their marker. It is now time for us to do the same. And in doing so, and in moving with expeditious action—not haste, not in an irresponsible way—I think we can turn to the American people and say: We have put in place the right safeguards, the right protections, the right firewalls. Study the papers, study the financials, and begin, once again, to reinvest in the American marketplace because it will be the right place to put your money.

Madam President, I yield floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I want to pick up on what the Senator from Idaho just said, which is, we were just meeting on the House side among the leadership. One of the messages that was very clear was, when this bill passes, the House is very eager to appoint conferees and to move forward to get a bill out as quickly and as responsibly as possible, to send all the right messages to the investing public and to Wall Street that Congress has seen the problem and that we are ready, willing, and able to act, and act in an expeditious way.

I think it is important for us to act. I agree with that sentiment. The House, obviously, acted months ago in dealing with this problem. We have taken a little bit longer, which we have a tendency to do in the Senate—take a little longer to get things done. But we are now moving forward, and we should not delay in getting to conference. We should not delay in appointing conferees in the Senate. And we should have a process by which we engage in these meetings earnestly and come up with a product, if possible, by the August recess.

It is little difficult. The House is going to be out a week before the Senate. So it is a pretty big task ahead of us, but we should go about it in earnest, and we should do our best to move this forward and send the signals that the Congress has moved as expeditiously as possible to meet the concerns of the investing public about the markets and the reliability of the numbers that corporations are sending out to the investing public.

I have to say, as one of the four members of the committee who voted against this bill in the committee, I have some concerns about the underlying bill that came out of committee. I have some concerns about particularly the impact on some of the small companies that will be governed by this legislation.

A lot has been made that this is a piece of legislation that just deals with publicly traded companies, and so we are talking about the big companies. As any of you who have watched the market for any length of time know, there are a lot of small companies that go into the equity markets and are publicly traded, particularly a lot of technology companies.

A lot of the economic growth engines of our economy are small publicly traded companies. One of the concerns I have is this bill may be appropriate for large multinational corporations—such as General Motors or IBM; you can go down the list; Xerox, whatever—but it may not be particularly an appropriate vehicle of regulation for small-cap stocks.

As you know, there are small-capital stocks, mutual funds, small-cap funds. To apply the same rigorous accounting standards and rules and regulations that very well may be appropriate for these large companies to these smaller companies could have a very significant negative effect on economic growth in our country.

To put these kinds of rules and regulations in place for these small companies is going to be very expensive, very onerous, and make it very difficult for them to conduct business. And remember, folks, who is responsible for economic growth in America, job creation in America. Let me underscore this. We have job claims up again just last week. The economic engine for job creation is small-

er businesses. A lot of them are these small publicly traded companies.

It is a very grave concern to me that, yes, we look at these companies we are talking about here. These are big companies that have done a lot of things that, obviously, they should not have done, and with big accounting firms. We are not hearing about scandal in these smaller publicly traded companies that use small accounting firms in most cases. To apply these rules to these smaller companies is really problematic and has a negative effect on our economy.

The last thing I want to see us do—yes, we want to strengthen confidence in the capital markets. Yes, we want to deal with the problems of fraud, and we want to hold people who commit fraud more accountable, and toughen punishments, which is what we have done on the floor. Those are very important things to do. But we should not do that at the expense of jobs and economic growth in our economy.

I understand there is a provision in the bill that allows smaller— any company, I guess, to seek a waiver as to some of the provisions of this act. I know a lot of small businesses, and most of them do not have a lot of money to hire lobbyists and lawyers and other people to come here to Washington, DC, or to New York and plead their case that they should somehow be preempted from the provisions of this act.

You are talking about 16,000 publicly traded companies, most of which—well over 75 percent—are relatively small in size. Imagine the burden of the regulators having to deal with petition after petition after petition.

Senator Gramm has an amendment, which I presume he will offer on Monday. I am hopeful that the Senate will seriously consider giving the regulatory body some flexibility in providing blanket waivers to classes of companies, or based on some sort of rational scheme of determination of size and scope of a company, that we give a little flexibility to the regulators not to sort of throw all the babies in this one big basket, and understand that there are real significant consequences to jobs and future growth of this economy if we did that.

So I know that is an issue on which we are going to have a discussion next week. But, to me, it is a very significant issue, one where you can be for tougher regulation, you can be for increased accountability, you can be for tougher penalties—all those things, setting up this governing board, having standards in place—you can be for all these things in the bill, but you have to understand that General Motors and ABC Tech Company in Scranton, PA, are fundamentally different entities and should not be treated the same way.

It really is important for us to have some sort of provision for the regulatory body to exempt some of these smaller entities, where some of these regulations do not really apply or misapply, from this scheme of regulation that is in this bill.

So with that, it looks as if we have another Member who might be interested in offering an amendment or giving a speech.

I am happy to yield.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, later I want to address a couple of points made by the Senator from Pennsylvania, but the Senator from Delaware is in the Chamber and wishes to speak. So I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, I know the Senator from Maryland is getting tired of receiving all these bouquets, but he deserves them. Senator Enzi is not on the floor, but he deserves one or two as well, along with others of our colleagues, not just on the Banking Committee but other Members as recently as this morning who offered amendments to this legislation which improve it materially, especially the amendment offered by the Senator from Missouri, Mrs. Carnahan. It is all well and good that we say to those who are senior officials within companies, if you have a stock transaction, you have to report it. Give them the paperwork, they report it, and it goes somewhere where few people ever have a chance to see it or be aware of it. It is quite another thing to list that transaction, do it electronically so anyone who has access to the Internet can find out about it. Senator Carnahan's amendment includes this electronic disclosure, and that is a very good improvement to the legislation.

I like what the Senator from North Dakota, Mr. Dorgan, has offered today, with respect to the process where we have companies normally registered and incorporated here in a State in America who somehow slip off to Bermuda and incorporate. We actually provide an incentive; if we don't adopt the Dorgan amendment, we provide an incentive for that kind of behavior. Not only does that have an adverse effect on States such as New York or Delaware or Maryland or Pennsylvania, it also has an adverse effect on shareholders because the heads of companies that are registered or incorporated in a place such as Bermuda would otherwise not have to sign off and vouch for the financial statements they are providing.

Even as recently as this morning, a good bill has gotten better.

I appreciate the amendment offered earlier by Senator Lott on behalf of the President and the addition of a number of provisions in the bill that the administration supports, and, frankly, I think we all should.

I came across an interesting column this week. I didn't know if I would read it, but given that the Senator from New York is presiding, I have to at least read the first paragraph. This is a column by a fellow who writes in the LA Times and is syndicated across the country, Ronald Brownstein. I will read a paragraph and perhaps ask unanimous consent that the entire column be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSH NEEDS TO DROP THE VELVET GLOVE APPROACH

(By Ronald Brownstein)

It's easy to imagine the frenzy that would be engulfing Washington if it was President Clinton now revising his explanation of a controversial 12-year-old stock deal.

Bush Limbaugh would be roaring in outrage. Robert H. Bork would be decrying the loss of moral authority in the Oval Office. Sen. Arlen Specter, R-Pa., would be

demanding a special prosecutor. Congressional committees would be subpoenaing the president's old business partners.

President Bush probably will be spared all that, even after suddenly altering his explanation for why he was eight months late in reporting to the Securities and Exchange Commission his 1990 sale of stock in Harken Energy Corp., a company on whose board he sat, shortly before it announced large losses. (For years he blamed it on the SEC; now he's fingering Harken's lawyers.)

After the fanatical ethics wars of the Clinton years, few in Washington have much stomach for a full-scale confrontation—though the Washington Post raised eyebrows by revealing Bush's former personal attorney was the SEC general counsel at the time commission cleared him of wrongdoing in the stock sale. The attorney, James Doty, says he reused himself.

The demands of the war against terrorism also will discourage a political firefight over the sale. But even so, the disclosures were still creating awkward moments for Bush as he prepared to call for greater corporate responsibility.

Actually, the focus on Bush's behavior 12 years ago may frame the wrong debate. It's likely that the dominant argument in Washington will be over whether it's credible for Bush to demand better corporate behavior while facing these personal questions. The more relevant issue is whether it's credible for Bush to threaten a crackdown now after his administration spent its first 18 months promising business kinder and gentler enforcement of the range of Federal laws against corporate misconduct—from the environment to the stock markets to the workplace.

In other words, can Bush plausibly shake the iron fist after stroking the Fortune 500 for so long with a velvet glove?

BUSINESS AS USUAL

For all the nouvelle elements of Bush's thinking on social issues such as education or home ownership, he's always been a conventional conservative on government oversight of business. As governor of Texas, presidential candidate and president, Bush has focused more on intrusive government than irresponsible corporations.

His consistent message has been that, in pursuing its goals and enforcing its laws, government should be more cooperative and less coercive. During the 2000 campaign, he crystallized his view on government's relationship with business when he insisted: "I do not believe you can sue you way or regulate your way to clean air and clean water."

Bush has put flesh on that philosophy by staffing many Federal agencies with alumni of the industries they now regulate. The Interior Department is crowded with former lobbyists for the coal and oil industries. A former timber lobbyist is watching the national forests Harvey L. Pitt, the SEC chairman, came from the accounting industry; Bush already has appointed another accounting industry alum to the five-member commission and nominated yet a third. (That means Bush is seeking to construct an SEC, for the first time, with a majority of commissioners tied to accounting.)

To monitor safety in the workplace, Bush found an executive from the chemical industry. To monitor safety in the mines, he appointed an executive from the mining industry. The list goes on.

In chorus, Bush's appointees have sung the same tune. At her confirmation hearing last year, Environmental Protection Agency Administrator Christie Whitman promised more negotiation and less litigation against recalcitrant companies. "Instilling fear does not solve problems," she insisted.

Over at the Occupational Safety and Health Administration, director John Henshaw as late as last month told a business audience: "Hopefully we can put the days of OSHA as an adversary behind us."

And before Enron and WorldCom and Martha Stewart forced the SEC chair to try to morph into Harvey Pitt-bull, he was sending the same message, telling the accounting industry last fall that he viewed them as the agency's "partner" and pledging "a new era of respect and cooperation" after the confrontations of the Clinton years.

Partnership with industry has its place. But enforcing Federal law to police the market place isn't it. No cop anywhere would agree with Whitman; they instead would argue that the best way to discourage drug dealing or street crime is to instill fear—of relentless enforcement. The same is true in the boardroom. Polluters or stock swindlers are more likely to stop because they fear being caught than because Washington asks them nicely.

Mr. CARPER. Here is the first paragraph:

> It's easy to imagine the frenzy that would be engulfing Washington if it was President Clinton now revising his explanation of a controversial 12-year-old stock deal. Rush Limbaugh would be reacting in outrage. Robert Bork would be decrying the loss of moral authority in the Oval Office. [One of our Senators] would be demanding a special prosecutor. Congressional committees would be subpoenaing the president's old business partners.

This is a whole lot more important than trying to find political advantage in a particularly difficult debate and a difficult time in this economic recovery. This is about the economy.

As a Nation, we are trying to come out of a recession. There is a fair amount of financial data which suggests we are heading in the right direction. The number of people being laid off is slowing. Manufacturing activity is increasing. Even economic activity among some of the most hard-hit sectors of the economy, technology sectors, is showing signs of life. I am encouraged by that.

If you look at the stock exchange for much of the last several weeks and months, it does not really reflect the returning, emerging vibrancy in the rest of the economy. That is not a good thing.

One of the reasons why it is so important for us to pass this legislation is to send a clear signal to investors not just around the country, but around the world that the United States is a good place in which to invest. Our trade deficit last year was about $300 billion. This year it is going to be even more than $300 billion.

We are starting to see the value of American currency, the dollar, which was robust and strong for the last several years, deteriorate. The worst thing that could happen for us, at a time when we need to attract foreign investments, would be to send a message that the United States is not a good or safe place in which to invest. When we are looking to much of the rest of the world to help finance a trade deficit of over $300 billion, it is important that we send a strong message throughout the world that the U.S. remains the best place in which to invest.

There are a number of provisions. I will not go through this bill provision by provision. I want to talk about some of the groups that have the greatest interest, the most at stake, what our obligation is to them, and how this legislation seeks to make sure that we not only recognize that obligation but that we act on it.

Shareholders of companies, publicly traded companies, should have confidence. They should have confidence not only in the CEOs and top officials, but they should have confidence in the board of directors whose job it is to represent the interest of the shareholders and to know that that board is indeed independent. Shareholders should have confidence in the audit committees of the board. Investors should know that the audit committees of the board are comprised of independent-minded board members, knowledgeable board members who will act, not as a lap dog, but as a watchdog every day as they serve on the audit committee.

Shareholders should have confidence that there are rigorous auditing standards that exist in this country and not that there are rigorous auditing standards that are on a piece of paper somewhere, but there is a strong, independent, knowledgeable entity that is going to make sure that those auditing standards are enforced.

How about the auditors of publicly traded companies? We should take away from them the temptation to look the other way or give

the benefit of the doubt to a company that they are auditing because of the temptation from some other part of the auditing company which deals with consulting services; in many cases, these are lucrative services. We want to make sure the folks doing the audits of publicly traded companies are interested in doing a good job because that is their responsibility. Auditors should not be interested in cutting corners, looking the other way because doing so might enable their accounting company to attract and to retain lucrative consulting services.

This bill goes a long way—some would say too far—toward curtailing that activity. To me, it strikes the right balance.

Most of us know of someone who used to work for one of the big eight, then big five, now the big four accounting firms who actually went to work for one of the companies that they audited. I do. I suspect all of us could think of someone who has made that transition in their lives. There is nothing wrong with that. However, the revolving door can be more troublesome when the person moves from the auditing company one day, the company responsible for doing the audit, and the next day, the next week, the next month ends up as a senior official of the company that last week, last month they were auditing.

This measure doesn't completely stop that revolving door, but it slows it down.

Another area that this bill tries to address is the question: How often is it appropriate to have a fresh set of eyes in charge of those independent auditors doing that independent audit of a publicly traded company? Under current standards every 7 years we say that the lead partner of an audit should be changed. This measure takes it down to 5 years. Not everyone agrees with that. Some would like to have a change in auditing companies, requiring auditing companies to rotate every 5 or 7 years. I don't think that is a good idea. I do believe the approach we take in this measure, moving from 7 to 5 years the period of time after which the lead auditor, the lead partner has to be changed, is sound.

How about investors? I talked about shareholders, about the auditors themselves. How about investors? The investors in this country and other countries need to be comforted by the knowledge that when they hear an analyst on television or read of an analyst's recommendation of a particular stock or stocks, when an analyst says buy, they mean buy. When an analyst says sell, they mean sell. When an analyst says hold, they mean hold.

Investors have the right to know that the analysts whose advice they are following or attempting to follow are not being pressured to color their recommendations of a buy, sell, or hold by what is happening on the investment banking side of the business, and to know that the analyst's compensation is going to be derived more from how well the analyst does his job, providing good analysis and investment advice, and not about how much new business that analyst can help bring to the investment banking side of their company.

How about the CEOs and senior management? When they break the law, they should be fully prosecuted under the law, and if what they have done is an offense for which they can be imprisoned, they ought to be. Our job in the Congress is to pass laws and to

say what the crime or penalty should be when people violate those laws.

It is the job of the Justice Department to fully prosecute—with the help of the SEC and the other watchdog agencies—people who violate the laws. Senator Leahy, on behalf of a number of Senators, earlier this week—yesterday, I believe—offered legislation that provides a new law that says not only can we prosecute some of the corporate wrongdoers—I am tempted to call them criminals, but I won't—who violate the trust, and to not only say you have to go after them under the mail and fraud provisions of the criminal code, but to broaden that—which is sometimes difficult to do—and make the prosecutions more easily done and with very tough penalties under another part of the code.

CEOs should not be allowed to profit from financial misinformation or from manipulation of their books. I commend the President and those who have worked on this legislation to say, to the extent that this does happen—a CEO or senior official benefits financially from tampering or cooking the books—they would be compelled to give that money back.

I mentioned earlier the legislation offered by Senator Carnahan of Missouri which would actually make sure there is a disclosure of sale when a CEO or senior official sells their stock; that the transaction would not only have to be reported to the SEC, but disclosed electronically.

Another provision in the bill that I think is especially good and timely, given what has gone on at WorldCom, where apparently a senior official of that company received a $360 million loan from the company—a loan which I don't believe the shareholders ever knew about—at least when they found out about it, it was too late for a lot of them. That kind of information should be fully disclosed promptly and through a medium that allows those who have some need to know—investors and shareholders—to have that information in a timely way.

Finally, a word about the employees who work for some of these companies that have gone through, or are going through, a meltdown. They need, I think, recourse when they are urged, on the one hand, by senior officials to buy company stock for their 401(k) investment plans at the very time when senior officials are bailing out of the company stock. There should be some kind of recourse for employees when that happens. In the belief of what is good for the goose is good for the gander, employees should never again face the situation that Enron employees faced where, during a lockdown period of time, employees could not sell their stock while senior officials were able to bail out and sell their stock. What is good for the goose is good for the gander. To the extent that employees in a lockdown period are not able to sell their company stock in their 401(k) plan, the senior officials of the company should not be able to enter into transactions involving their stock either.

There is one thing I don't believe we address in this bill; the others I mentioned, we do. One area we do not address—and I suspect it comes later—and a member of the staff will tell me if I am mistaken. One of the problems we have with 401(k)s for the employees, the investors, is that they don't get very good advice. The companies don't want to be held liable if they provide bad advice when

all is said and done. And when we move on to other issues, I hope we will have agreed on a way to better ensure that the employees who are not getting very good advice do get that good advice.

I worry about the concentration of assets and investments. I know some people believe there should be a cap and that they should not be able to invest any more than half or a quarter in company stock for your 401(k). If I am an employee and I am buying company stock, maybe I should have to sign a form that is an acknowledgment that I am about to do something very stupid—something similar to what the employees did at Enron, where they put all their eggs in one basket—and acknowledge that is not a bright thing to do, and acknowledge that I am doing that unwise thing myself. Maybe that is needed here. In addition to that kind of disclosure, I think we do need to address the need for better advice for employees.

I will go back to where I started; that is to say, a lot is riding on this legislation—a whole lot more than we would have guessed 6 months ago. Six months ago, as we saw Enron melt down and the disclosures come forward, we thought it was one company that was poorly run, maybe fraudulently run. A lot of people were hurt who worked at that company. A lot of people who worked for the auditor, the accounting firm, Arthur Andersen, have lost their jobs and were, frankly, fully innocent, but they have been harmed. Six months ago, there was a full sense of outrage at Enron and the people who led it to its fall.

We know now that what happened at Enron may not be precisely the same as other companies, but it is symptomatic of the behavior in other companies, where the people who run those companies do not meet their obligations to the shareholders, to the employees, and where greed has corrupted too many people. While it is difficult for us to pass a law outlawing greed, we can try to outlaw fraud. But it is tough to do that; I acknowledge that.

With the developments within a whole host of other companies—disclosures of financial mismanagement and misstatements, misrepresentation of performance of other companies in recent months—the importance of what we are doing this week and next has grown. We need to get this economy moving in the right direction. I believe that, underneath, a lot of the fundamentals are pretty sound. If you look at growth, and productivity, and the manufacturing activity to which I alluded earlier, there is some good news. The troubling news is what is going on in the stock market, as investors are skittish, and that is understandable.

We can begin to restore, in a very meaningful and tangible way, the confidence of those investors in America and in American companies, and we ought to do that.

The last word I will say is this. I commend Chairman Sarbanes. He is not presently on the floor. I also commend the committee staff and personal staffs for the kinds of hearings that have been held this year which have led us to this day. Chairman Sarbanes is not the sort of person who is interested in rushing out and being on television every night. He is not interested so much in seeing his name or picture in the newspaper. He is interested in getting at the truth. I think the hearings that were held over many months have led us to finding the truth and, maybe just as important, to

finding the right course for us to take as a Nation, to be able to right some of the wrongs that have been done and to reduce the likelihood that further wrongs will occur in the future.

I know some have been impatient for us to get to this day and to take up this legislation, pass it, and to send it to the President. I think it has been worth the wait. I acknowledge that not everything that needs to be done ought to be done by the Congress. The stock exchanges have made a number of excellent changes, and they are to be commended. Many companies and many corporate boards, that have sort of been tarred with the same brush, and senior officials and CEOs who are doing a good job in acting and behaving in a most important way, have been tarred and feathered with the same brush.

A lot of companies have said, themselves, they have taken a look in the mirror—boards of directors, audit committees, and others—and said: We can do better. And they have adopted reforms. Shareholders—market forces—have come to bear on companies, their boards of directors, as they should, and that is helpful as well.

In the end, there are some things the Congress can do and ought to do, maybe not all of them, but a lot of them are included in this legislation before us. I am proud to have participated as a member of the Banking Committee in its development and proud to be a witness to the work that is going on in this Chamber to make a good bill even better. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. Madam President, in a moment I am going to ask unanimous consent that the pending amendment be set aside and that I be allowed to call up amendment No. 4283. This amendment relates to stock options. The amendment is one line. It says that the standard-setting body for accounting principles that is set up in this bill shall review the accounting treatment of employee stock options—just review it—and shall within a year of enactment of this act adopt an appropriate generally accepted accounting principle for the treatment of employee stock options. They shall review it within a year and adopt an appropriate standard.

There has been a huge amount of debate about stock options. Recently the Republican Senate staff of the Joint Economic Committee issued a report about "Understanding the Stock Option Debate." In that report, it concluded that, "Basic principles of financial accounting imply that stock option awards should be treated as a cost in corporate financial statements, and this cost should be recognized at the time of grant."

We have a Republican Senate staff report which, after reviewing all of the pros and cons, concludes that stock option awards should be treated as costs in financial statements. It is a very strong document. It is an analysis that I recommend to people to read.

Our amendment, however, does not do that. Our amendment, which is an amendment I am offering on behalf of myself, Senator McCain, and Senator Corzine, simply says that the board we are funding in this bill should review the accounting treatment of employee stock options and adopt an appropriate standard.

How anybody can be opposed to the proper accounting board doing a review and coming up with an appropriate standard is

something beyond my understanding. I can understand the arguments, the pros and the cons. I have been through them for 10 years. I have argued that we ought to treat stock options like any other form of compensation, and I believe we should. But I do not set accounting standards. That is not my job. That is the job of this newly independent board to set accounting standards, and we should urge them to take a look at this. This is where this matter should be referred and at a minimum, Madam President, I ought to be allowed to get a vote on this amendment.

This is a germane amendment. We are in a postcloture situation, and I do not know of a time—there may be; I have not been around here as long as some—but I do not know of a time when a germane amendment postcloture has not been permitted to go to a vote.

Apparently, that is what is going to happen, from what I hear. I hope it is not true, and I do not want to be unfair to my good friend from Pennsylvania. He may not object. But I think it is a misuse of our rules now I am going to get to a process issue—to not permit a germane amendment postcloture to be voted on. And this amendment is germane.

On the stock option issue, we have everyone from Alan Greenspan to economists. Let me read the list of some of the people who support a change in stock option accounting: Alan Greenspan; Paul Volcker; Arthur Levitt; Warren Buffett; TIAA-CREF, one of the largest pension funds in the United States for teachers; several economists; Paul O'Neill; Standard & Poors; Council for Institutional Investors; Citizens for Tax Justice; Consumer Federation of America; Consumers Union; AFL-CIO; on and on. They believe that stock options are a form of compensation, they have value, and they should be part of the expenses on the books of a corporation just as they are taken as a tax deduction at this point.

One of the driving factors in the corporate abuses that we have seen are the huge gobs of stock options which have been handed out to executives. Then executives push accounting principles beyond any comprehension to raise the value of the stock and then exercise their options and sell the stock. We have seen this situation repeated in corporation after corporation, and I believe we ought to try to put an end to it, but that is not what this amendment does. This amendment simply says: We are creating a newly independent board. This independent board should decide on what the appropriate standard is. That is why we are providing independent funding for it.

I want to read a part of a Washington Post editorial of April 18, 2002:

> Alan Greenspan, perhaps the Nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffett, perhaps the Nation's foremost investor, has long argued the same line.

Skipping down:

> The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the common-sense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. . . .

Why does this matter? Because the current rules—which allow companies to grant executives and other employees millions of dollars in stock options without recording a dime of expenses—make

a mockery of corporate accounts. Companies that grant stock options lavishly can be reporting large profits when the truth is that they are taking a large loss. In 2000, for example, Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profits; the real number was a $2.7 billion loss. By reporting make-believe profits, companies may have conned investors into bidding up their stock prices. This is one cause of the Internet bubble.

Then this editorial goes on:

> But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense.

Madam President, that is what most of the accounting profession, economists, and business people, other than those executives who are taking such huge amounts of stock options, want to do. This is what the Accounting Standards Board wanted to do in 1993, but then were beaten down so badly that they had to come up with an alternative instead called disclosure.

Even when the accounting board decided to do that—which was not an independent accounting board because it did not have an independent source of financing, unlike this accounting board will have after we enact this bill—and now to read their report of 1994. The board issued an exposure draft called, "Accounting for Stock-Based Compensation," and they decided that stock option values should be expensed. Then they said the draft was extraordinarily controversial, and the board not only expects but actively encourages debate on issues. Then they pointed out in the FASB document that the controversy escalated throughout the exposure process.

Then in paragraph 60 of their findings, the FASB board said the following, that "the debate on accounting for stock-based compensation unfortunately became so divisive that it threatened the board's future working relationship with some of its constituents. The nature of the debate threatened the future of accounting standards-setting in the private sector."

This is an extraordinary document and everybody should read it so people understand the kind of pressure that not only that board was under—hopefully, the newly independently funded board will not be under—but the kind of pressure which exists in this Congress. We have, in essence, a new board, because it has an independent source of funding. We ought to let that board reach an independent conclusion on one of the most controversial, contentious issues we have before us.

This is a tremendous bill we are voting on. But it can be strengthened. It is not a perfect bill, and from the point of view of pure fairness and deliberation, this Senate should be allowed to vote on a germane amendment postcloture.

I will read one additional paragraph from the FASB document report to set out the extent of the pressure which exists in this area and why it is so important there be a review of this whole matter by an independent board.

In December 1994, the board said it decided that "the extent of improvement in financial reporting that was envisioned when this project was added to its technical agenda was not attainable."

Why was it not attainable, the FASB said? Because the "deliberate, logical consideration of issues that usually leads to improvement in financial reporting was no longer present." These are incredible words. This is from the board that is supposed to set accounting standards in this country. They wrote in their report that when their proposal to expense stock operations was issued, it was not attainable because the "deliberate, logical consideration of issues that usually leads to the improvement in financial reporting was no longer present."

Why was it no longer present? Because the debate had become so divisive, in their words, that it threatened the board's future working relationship with some of its constituents.

The nature of the debate, they wrote, threatened the future of accounting standards-setting in the private sector.

Finally, the board, beaten down, threatened with extinction, said this: "The board chose a disclosure-based solution for stock-based employee compensation to bring closure to a divisive debate on this issue, not because it believes the solution is the best way to improve financial accounting and reporting."

That was in 1994. We have seen what has happened in terms of stock option abuses because this board, if it had proceeded in the way it thought best, would have gone out of existence.

This bill creates a newly independent board, a board that has an independent source of revenue. This bill, it seems to me, is not complete, is not strong, unless we now say to this country that the newly independent board should review this accounting standard and reach an appropriate conclusion.

This amendment, which is cosponsored by Senators McCain and Corzine, does not say what that conclusion is. It does not, unlike the McCain amendment which was not allowed a vote yesterday, conclude that stock options should be expensed. It does say we have an independently funded board which should review this matter and reach the appropriate conclusion.

Mr. REID. Will the Senator yield for a question?

Mr. LEVIN. I would be happy to.

Mr. REID. I am just curious. I am not sure I should get involved at this stage because the Senator knows the subject so well, but this board that is set up in this proposed law, they would not have authority to do that on their own?

Mr. LEVIN. They would.

Mr. REID. Why do we need your amendment?

Mr. LEVIN. Because this Congress has been on record as saying what the accounting standard should be. In the early 1990s we took a position. This neutralizes that position. This says, the accounting board is the right place. The Senate is on record by a vote of 88 to 9 as saying there should not be the expensing of stock options. What this amendment says is that the board should decide. It should review this matter. It takes a neutral position, thereby clearing the record as to what the position of this Senate is.

As of now, all we have on record is that stock options should not be expensed. What this amendment would say is, you should review this and reach an appropriate standard.

Mr. REID. My question to the Senator was, If we did not have the Senator's amendment, would the board not have that authority anyway?

Mr. LEVIN. They could do it, but all that there would be on the record would be our last statement saying they should not expense. That same kind of pressure we put on them would still be on the record, and I think that should not be the last statement this Senate should make on this subject.

The last statement we ought to make on this subject is that the accounting board is the appropriate place to make that decision, not the Senate.

Mr. REID. I still ask my friend for the third time, if we have no Levin amendment, it would seem to me this newly created board would still have authority to do what the Senator is talking about.

Mr. LEVIN. Under the cloud we created in 1994. I would refer my friend to the debate in this body back on May 3, 1994, where the Senate reached a conclusion that it is the sense of the Senate, that was approved by, again, a vote of 88 to 9 or something like that, that the Financial Accounting Standards Board should not change the current generally accepted accounting treatment of stock options.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. SARBANES. I asked the Senator to yield because I do want to underscore that the legislation that is before us takes a major step in trying to guarantee the independence of the Financial Accounting Standards Board in terms of how it provides for its funding, and that is a dramatic improvement of the situation because heretofore the standard board had to seek voluntary funding. So the standards board ended up going to the people for whom it was establishing the standards in order to get money to fund its operations. Well, when it came to the crunch—and this issue was one such crunch as far as the Financial Accounting Standards Board was concerned—the people from whom they were voluntarily getting the money said we are not going to give you any money. You are not going to be able to carry out your activities.

So we moved in this legislation because one of the things we require is that the issuers pay a mandatory fee. If you are an issuer, you are registered with the SEC and you have to pay a fee. That goes into a fund and that fund pays for the budget of the Public Accounting Oversight Board and the budget of the Financial Accounting Standards Board, so they are assured a revenue source.

I urge people to stop and think about that because it is a very important step to ensuring the independence of both boards. But here we are talking about the Financial Accounting Standards Board, and the dramatic change from its previous situation.

So it really will have, at least on the budget side, the independence to go ahead and make these decisions as they choose to call them. The issue that becomes involved in all of this otherwise is the question, Should the Congress of the United States be itself actually establishing accounting standards? Of course, as the Senator indicated, when an opinion was voiced on that a few years ago, it went in one direction. And now people want the Congress to come along and express an opinion in another direction. I have some

sympathy. Obviously, we have seen things happen. Most people might have sympathy.

But we come back to the basic question, whether the Congress should be doing this. We set up this accounting standards board so it could make independent judgments. Unfortunately, there is no question about the fact that previously the standards board was subjected to tremendous pressure which affected its ability to make an independent judgment. It got tremendous pressure from industry groups, pressure from Congress reflecting the pressure of industry groups, and of course this exposure on its budget.

We have tried in the legislation to address this very basic question of making sure this board has its independence. That does not reach to the specific issue the Senate is now addressing, but I wanted that on the record. It is important that be understood.

Mr. REID. Mr. President I ask unanimous consent I be allowed to speak using my own time for up to 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I will conclude, but I need to reclaim the floor because apparently all time otherwise is counted against my allotted time postcloture.

Mr. President, I ask unanimous consent the pending amendment be set aside and that I be allowed to call up the amendment I filed at the desk relative to this subject which I understand has been ruled germane.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Reserving the right to object, I want to make a couple of points.

No. 1, the Senator from Michigan suggested that all amendments that are germane postcloture should be allowed to be offered. I wish that were the case. I wish we had the opportunity to do that in all situations, but that has not been the case in this Senate, or has not been necessarily the history of the Senate. There have been many instances where germane amendments have not been allowed to be offered postcloture.

No. 2, I make a point and reiterate the point that the chairman of the committee has made. The Senator from Michigan has made the point that FASB has been compromised because it wanted to do things and it felt constrained by the constituency which funds it. We have set up an independent funding source for FASB now, and I think that would allow a lot more independence to be able to deal with these accounting issues, such as the way we treat stock options, in a way that allows an independent judgment.

Finally, while we do have a sense of the Senate that is 8 years old on this issue, the Congress has never directed FASB to study an issue of accounting. This is precedent setting. There is nothing in this bill that directs FASB to do anything. It is an independent board. It sets up the accounting standards. I think there is no question that it will in all likelihood review this issue.

For the Congress to begun to weigh in—even 8 years ago, we did not direct FASB to do this; we simply expressed our opinion. To direct FASB to do something would be a very bad precedent to set.

I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I see no reason that a vote should not be permitted on this amendment. That is what this objection leads to. I urge we come back on Monday, or whenever we do come back, and I will make this motion again because this is a critical issue, that is not addressed in this bill, which is a big part of the lack of credibility we have right now in our markets. It needs to be addressed in some way. This is a neutral way to do it.

The arguments given by our friend from Pennsylvania are reasons to vote no on an amendment. They are not reasons to prevent an amendment from being called up and being offered.

I will say again, I don't know where an amendment that is ready to be offered is not permitted to be offered because postcloture one side of the aisle has decided it is going to leave a first-and second-degree amendment standing out there without a vote in order to prevent other germane amendments from being voted on. I don't think that has ever happened. Obviously, we have reached the end of the 30 hours at times and there are still germane amendments that are pending. But this is not that situation.

There is no further debate on the Carnahan amendment that I know of. Why not vote on the Carnahan amendment? There is no further debate—or if there is, let the debate take place so that other people can offer their germane amendments. That is being precluded here. I believe it is a misuse of postcloture rules to do that.

That being the situation, I will be offering a unanimous consent at this time that my amendment be made in order at 2 p.m. on Monday.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. I object.

Mr. LEVIN. I thank the Chair, and I will make a unanimous consent request again on Monday that we be allowed to offer germane amendments in the time that remains on Monday and that we not be precluded by a blocking action which, it seems to me, is a distortion and a misuse of the postcloture rules which are intended to allow 30 hours to consider germane amendments. If that 30 hours is being used up and either being sworn off or not used, it seems to me that then precludes consideration of highly relevant—indeed, germane—amendments which are important to strengthening this bill.

I thank the sponsors of this bill. It is a strong bill. There is no reason we should not be able to vote on a way to make it stronger.

I yield the floor.

Mr. GRAHAM. Mr. President, I appreciate the chance to speak about the Public Company Accounting Reform and Investor Protection Act. I would like to strengthen section 302 of this legislation which is entitled, "Corporate Responsibility For Financial Reports."

I have discussed several ideas with Senator Sarbanes and greatly appreciate his leadership on this legislation. He has been tireless in his efforts to strengthen corporate accountability and protect the American investing public.

My first area of concern involves companies that have chosen to move their headquarters overseas. This legislation requires that CEOs and CFOs sign a statement saying that the financial documents they have filed are fair and accurate. This is consistent with

an order just issued by the Securities and Exchange Commission, SEC, that requires CEOs and CFOs to attest to the accuracy of their company's most recent financial statement.

But there is a glaring omission to this recent SEC order. Only companies that are U.S.-based would be required to send in these signed documents. If a company once based in the U.S. has fled our shores and gone overseas for tax reasons, they now just received a reward for leaving our Nation. Those CEOs and CFOs would not have to sign financial documents and attest to their accuracy.

The SEC has also overlooked the accuracy of future financial documents by non-U.S.-based companies. Under a proposed rule, that is in the "open comment period," foreign based companies are again enjoying a lesser standard of accountability. This is wrong, and unfair to American companies.

In the proposed rule, the SEC does invite comments on how to cover overseas-based companies. However, this could be a case of "too little too late." If companies are being publically traded in the United States, regardless of where their headquarters are located, they ought to be required to meet the same level of accountability that we are establishing for everyone else in this legislation.

Let's not give U.S.-based companies one more reason to leave our Nation and incorporate someplace else. We need to hold all companies in our markets to the same high standard—there should be no reward of a lower standard if your company leaves the U.S. for a new overseas headquarters.

My staff placed a call to the SEC to uncover the reason why foreign based companies were excluded from their recent order. To the credit of the SEC, they wanted to act quickly. They thought that the quickest way to promulgate this order was to cover only U.S. based companies. However, in doing this quickly, they ended up sending the wrong message. U.S. based CEOs and CFOs are "on the hook" in signed statements. Foreign-based CEOs and CFOs, simply put, are not.

Senator Dorgan and I want to change this. We want it to be clear in the statute that no matter where your company is based, you must comply with this obligation. Senator Dorgan has filed an amendment to correct this, amendment No. 4125.

I appreciate the consideration that the floor managers, Senator Sarbanes and Senator Gramm, have given our amendment and I encourage all my colleagues to support us in this effort. I look forward to seeing it in the final legislation.

Mr. JOHNSON. Mr. President, I rise today to urge my colleagues to take swift and decisive action to stem the tide of corporate greed that is eroding the integrity of America's capital markets. I am a strong believer in the free enterprise system, and I am proud of America's leadership in creating tremendous economic opportunity for all investors, big or small, domestic or foreign. However, it is time that Congress curb the appalling corporate excesses and misinformation that have hurt investors, employees and taxpayers. Passage of the Public Company Accounting Reform and Investor Protection Act is a critical step in addressing these concerns.

It is tempting to blame the problems corporate America is facing on just a few bad actors. For the most part, America's business men and women are industrious, innovative, and honest people

who work hard to build our economy and provide jobs for our communities. However, we simply cannot ignore the shocking number and size of failed or failing companies, the marked increase in earnings restatements, and the profound toll this has taken on hard-working Americans. In fact, state pension funds have plummeted more than $1 billion from the WorldCom restatement and billions more from other companies involved in the scandals.

In light of these inexcusable revelations, it is hard to believe that these problems are just isolated instances. Almost daily discoveries of accounting irregularities at some of America's largest and most highly respected companies, such as Enron, WorldCom, Tyco, and Xerox, to name just a few, clearly demonstrate the need for systemic accounting and corporate governance reform. Just recently, in fact, the Wall Street Journal reported that the drug company Merck may have understated revenue by over $12 billion.

We must address systemic problems that are undermining the efficiency and transparency of our free market system, and which are eroding the faith of everyday Americans in the fundamental fairness of American business practices. We must clean up the current corporate culture that rewards misleading financial reporting and lax or corrupt corporate governance. We need strong legislation that will end the conflicts of interest and lack of disclosure that have misled investors and shaken their faith in America's financial markets. And we need to ensure that the SEC has the tools and money it needs to become a strong and formidable enforcer of securities laws. A kinder and gentler SEC serves only those corporate executives who have something to hide.

The Public Company Accounting Reform and Investor Protection Act addresses these problems in a way that limits regulatory burden but provides affirmative measures to restore the integrity of our free market system. I support the bill's creation of a strong Public Company Accounting Oversight Board and restrictions on non-audit services accounting firms can provide to public company audit clients. Further, the bill imposes tough new corporate responsibility standards and implements controls over stock analyst conflicts of interest. Also, the bill requires public companies to quickly and accurately disclose financial information, so that high-level executives don't have a head start over small investors in bailing out when a company is in trouble. Finally, the bill ensures that the SEC has the resources to accomplish its mission of regulating the securities markets.

On this last point, I was disappointed that President Bush's budget did not include money that the Banking Committee authorized last year that would have strengthened the SEC. The SEC has long been hobbled by its inability to compete for top-notch employees because of a pay scale that was out of line with other financial regulators. Late last year, Congress passed, and the President signed, H.R. 1088, which provided pay parity for SEC employees. Unfortunately, the President's budget did not allocate additional funds, making it difficult if not impossible for the SEC to carry out its enforcement mission. I am pleased that President Bush is now calling for additional funding for the SEC, which should be better able to police public companies with adequate resources.

Without the threat of real consequences, however, dishonest corporate executives have little to fear from being caught with their hands in the cookie jar. For this reason, Congress must implement a plan to hold irresponsible corporate executives responsible for their actions. We must not allow these criminals to hide behind the corporate veil, while stealing millions of dollars from hard-working Americans. In that vein, I support provisions contained in the Corporate and Criminal Fraud Accountability Act, sponsored by Senator Leahy. The bill would provide stronger criminal penalties for corporate managers who defraud investors of publicly traded securities, criminal prosecution of persons who alter or destroy documents related to investigations, and protection for corporate whistleblowers against retaliation by their employers, among other provisions designed to protect investors from corporate greed.

Finally, I believe that we should take a strong stance against another form of corporate greed: corporations that profit from American consumers, yet intentionally dodge U.S. taxes by moving their headquarters abroad. It is outrageous that these so-called "American" companies take advantage of the benefits of operating in this country and yet shirk even the most basic responsibilities of corporate citizenship. That's why I strongly support the Tax Shelter Transparency Act, sponsored by Senator Baucus, which would close the loopholes that allow corporate executives to use evasive accounting tactics to enrich themselves on the backs of American taxpayers.

Before I close, I would like to thank Chairman Sarbanes for his leadership on this important issue. I also want to thank the Chairman as well as the Banking Committee staff for conducting a series of ten inclusive and comprehensive hearings on the issues addressed in his bill. The content of those hearings provided a conceptual foundation for our subsequent discussions of Senator Sarbanes' bill and a previous bill proposed by Senators Dodd and Corzine. In addition, our work has been enhanced by the fine contributions of Senator Enzi, who is the Senate's only Certified Public Accountant. The deliberative process used to develop this legislation has led to an appropriate, thoughtful, bipartisan bill that makes great strides in addressing the problems in our financial markets and restoring investor confidence.

Ms. LANDRIEU. Mr. President, I would like to voice my strong support for S. 2673, the Public Company Accounting Reform and Investor Protection Act. This legislation will bring accountability to our corporate boardrooms and end the accounting abuses that threaten to undermine the free enterprise system.

The hallmark of our economic system is free, fair, and open competition. The system rewards innovation, efficiently, and hard work. It allows individuals to take an idea, a dream, or an invention; build a business around it; and turn it into a livelihood. Some of our greatest corporations today started with just one idea.

The recent revelations from Wall Street have thrown much of this in doubt. For the Enrons, and WorldComs of the world, success was based on hiding losses, misstating earnings, destroying documents, and getting cozy with their so-called "independent" auditors and the stock analysis who are supposed to give the stock buying public objective information. Instead of winning through open com-

petition, these companies and others won through accounting sleight-of-hand.

The price of this deception has been too high. While much has been made in the media about how far the Dow, the NASDAQ, and the S & P 500 have fallen on Wall Street, the real pain is being felt on Main Street—in retirement plans, pensions, and the investment portfolios of hard working people in our country. The pain is being felt by the very wealthy and people with modest means. Fortunately no Louisiana-based corporation has been caught up in this mess and hopefully that will remain the case, but many Louisiana investors were not so lucky.

Many have said that all of these problems have been caused by a few bad apples. But when we hear about corporations hiding losses, creating off-book partnerships, insider trading, and inside loans to corporate officers, it means that something may be wrong with the whole tree: the tree is rotten because of loopholes in regulations and limited oversight.

My State of Louisiana is home to a large number of small businesses—94,000 of the employer businesses in my state employ fewer than 500 people—and they employ about 54 percent of the state's workforce. This does not include the estimated 135,000 self-employed people in my state. I find myself wondering what small business owners think of all of the news reports about these big, sophisticated corporations and their crooked accounting?

Small business owners work hard to keep clean books. They do not have a team of creative accountants that turn losses into gains. The small business does not create sham, off-book partnerships to hide losses. I have never heard of a small business being forced to restate its earnings. Small business grow by playing by the rules. Many small business owners dream of taking the honest approach to turning their ideas and dreams into big businesses. How disheartening must it be for them to see that in the world of big corporate business the way to get ahead is by cheating.

The bill before us today will help restore faith in the free market. It creates a strong oversight board that will set auditing standards for public companies backed up with the power to investigate abuses. It gets rid of the inherent conflict of interest faced by accounting firms that provide management consulting services to their auditing clients. Here on the floor we have added tough criminal penalties to this bill and given greater protections to whistles blowers. The whistle blower protections are an especially needed reform. We want the honest people in business to know that there is still a place for them.

We must take this opportunity to restore confidence in the free market. I urge my colleagues to vote in favor of this legislation and I want to commend the chairman of the Committee, Mr. Sarbanes, for bringing this legislation to the floor.

VOTE EXPLANATION

• Mr. KERRY. Mr. President, due to a longstanding commitment I was necessarily absent for the vote on cloture on the Public Company Accounting Reform and Investor Protection Act of 2002 (S. 2673). Although my vote would not have affected the outcome, had I been present, I would have voted for cloture on the bill.•

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, MONDAY JULY 15, 2002, NUMBER 95, PAGES [S6734–S6793]

Public Company Accounting Reform and Investor Protection Act of 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Reid (for Carnahan) modified amendment No. 4286 (to amendment No. 4187), to require timely and public disclosure of transactions involving management and principal stockholders.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan, Mr. Levin, is recognized.

Mr. LEVIN. Mr. President, I wonder if I might inquire as to how much time I have on my allotted time under postcloture rules.

The PRESIDING OFFICER. The Senator has 36 minutes remaining.

Mr. LEVIN. I thank the Chair.

I will at a later time ask unanimous consent that the pending second-degree amendment be laid aside so I can offer a germane second-degree amendment relative to stock options.

My amendment, which is at the desk, would direct the independent accounting standards board to review the accounting rule on stock options and adopt an appropriate rule within 1 year.

It should not be necessary to seek unanimous consent. The whole purpose of our postcloture rules is to allow those of us who have germane amendments such as this one to offer that amendment, to have it voted on. It is a frustration of the clear intent of our rules to not allow germane amendments to be voted on after cloture is invoked.

We have a strict rule. It is called cloture. It ends debate. When cloture was invoked, I had pending an amendment which would have given the Securities and Exchange Commission greater powers to impose civil fines administratively. It is an important addition to SEC powers. They now have that power over brokers, but they don't have it over corporate directors. They don't have it over corporate managers. They ought to have the power to impose civil fines administratively—subject, of course, to appeal to the courts—relative to corporate directors and corporate officers.

That amendment, as relevant as it is to this bill, was frustrated when cloture was invoked and when all the time up to that vote was utilized so that my SEC amendment was not allowed to come up for a vote.

Now we are in postcloture. Now we are under postcloture rules. The question is whether or not the intent of those rules is going to be carried out, which is to allow those of us who have germane amendments to have a vote on those amendments.

The amendment on which I would like to have a vote cannot be voted on because there is a pending first-degree amendment and a pending second-degree amendment. So the second-degree amendment would have to be laid aside in order to allow a vote. As long as the opponents of this stock option accounting amendment don't allow the first- and second-degree amendments that are pending to come to a vote, we are foreclosed from offering germane amendments.

That is not the intent of our postcloture rule. I believe it is an abuse of the intent of our postcloture rule. I hope it will not happen here. I am hoping against hope that there will not be an objection to my unanimous consent request so that this most critical issue can be addressed by the Senate.

If we don't address this issue, it seems to me we are leaving a significant gap in the reforms we are struggling so hard to adopt to try to restore honesty to accounting rules.

In 1994, the Financial Accounting Standards Board issued a tentative rule which said that stock options should be expensed like all other forms of compensation. That is what they decided was the right thing to do.

Well, Congress intervened. The executives intervened strongly, beat back FASB with huge pressure, all set out in the FASB account of its rule. By the way, one of the most extraordinary documents I have ever read, as a matter of fact, in 24 years in the Senate, is that Financial Accounting Standards Board history of their effort to bring honesty to accounting for stock options, in their judgment, and how that effort was beaten back by pressure from executives and from Congress so that their very existence was at stake if they proceeded in a way which they thought was right. All set forth in the record. It is quite an amazing document.

So what FASB did was, they said: We can't survive if we do what we think is right. So what we will do instead is we will urge people to expense options. We will urge corporations to expense their options, but we will not mandate it.

FASB said: If you don't expense options, at least disclose the cost of the options as a footnote in your financial statements.

That was the way they decided to survive. This body voted, put some of the pressure on FASB, basically told them to leave stock option accounting alone. So we intervened on an accounting issue with a vote of something like 90 to 10 or thereabouts.

The executives weighed in. I was at one of the meetings in Connecticut when the executives weighed in heavily on this issue. So I saw the pressure that was brought to bear on what should be an independent accounting standards board.

Now we are doing something different in this bill. We are saying to the board that we are going to give you an independent source of funding. We are not going to make you dependent directly for your funding from the very people you are seeking to regulate through your accounting standards. So we are making some progress now by giving them an independent source of funding.

What my amendment would do is take what is the most significant post-Enron issue that is left open, which is accounting for these huge amounts of stock options that go mainly to executives, and direct this board that now has an independent source of funding to review—"review" is the key word—this matter and make an appropriate decision within 1 year.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. LEVIN. I wonder if I can yield on the time of the Senator from Arizona, because time is so limited here that I am going to have very little. I think the Senator has a half hour and, assuming that the Senator can be recognized, I believe that I only have about 10 or 15 minutes of time remaining. I wonder if the Senator from Texas would permit that I be allowed to yield to the Senator from Arizona, if the Senator from Arizona is willing to ask a question to be taken out of his own time.

Mr. GRAMM. Reserving the right to object, the Senator started out with a unanimous consent request and then launched into a speech.

The PRESIDING OFFICER. There is no request pending.

Mr. GRAMM. Maybe if the Senator would do his unanimous consent request and then yield, that would be fine.

Mr. LEVIN. I would rather do my unanimous consent request at the end of the time, rather than at the beginning of the time. I make a parliamentary inquiry. If I make a unanimous consent—

Mr. GRAMM. I don't object to the Senator yielding. I wanted to be sure we had the time we were supposed to have.

Mr. LEVIN. I ask unanimous consent that the Senator from Arizona, if he is willing, be able to ask a question on his time. I yield to the Senator from Arizona for that question and then I retain the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I will be very brief, due to the shortness of time. I wonder if the Senator from Michigan remembers my comments last Thursday when I referred to an old boxing term, "the fix is in." There was no vote allowed on my amendment, which is a clearcut, absolutely unequivocal statement about the use of stock options for accounting. Does the Senator really believe that, since my amendment was blocked by that side, his amendment is not going to be blocked by this side?

The fix is in, I say to the Senator from Michigan. I hope he knows that. This is a terrible mistake, a terrible mistake, because we are not addressing what every observer knows is a vital and critical aspect of reforming this system, which continues to so badly erode the confidence of the American people, the investors, which is over half of the American people.

I wonder if the Senator from Michigan remembers what I said last week, that the fact is the fix is in. I didn't get a vote on my amendment and the Senator from Michigan won't get one on his. Very frankly, since that side blocked my vote, I can understand them blocking this vote. I think it is wrong on both sides.

The American people deserve to know how we stand on the issue of stock options. Does the Senator understand that?

Mr. REID. Will my friend yield for a question on my time?

Mr. LEVIN. I am happy to.

Mr. REID. The Senator will recall the Senator from Arizona talking about the fix being in, and the RECORD will clearly reflect that the Senator from Arizona asked that his amendment be in order postcloture, and, as the Senator from Michigan will recall, I objected to that because at that time we had 56 other amendments that were pending. They also wanted them to be in order.

Mr. MCCAIN. If the Senator will yield, that is not correct. Mine was a motion to recommit.

Mr. REID. I am talking about the objection about which I was involved, and does the Senator from Michigan recall that objection to the unanimous consent request by the Senator from Arizona?

Mr. LEVIN. I believe I do recall the objection to the request, and I would rather let the RECORD speak for itself as to the other matters because I think the issue before us is a somewhat different issue than we faced on the McCain-Levin amendment last week. Now we have a Levin-McCain-Corzine amendment, which is somewhat different. I supported Senator McCain's amendment, and, indeed, I have been very active in trying to get this accounting rule adopted in the way the independent accounting board wants to have it adopted. That is the key emphasis.

Mr. SARBANES. Will the Senator yield on my time for a question?

Mr. LEVIN. I am happy to yield.

Mr. SARBANES. As I understand the Senator's amendment—the one he will be seeking to offer.

Mr. LEVIN. I will be seeking unanimous consent to have the second-degree amendment laid aside so that I can do so.

Mr. SARBANES. As I understand it, this amendment is not the Congress trying to legislate what the accounting standard should be; is that correct?

Mr. LEVIN. The Senator is correct.

Mr. SARBANES. I think that is important because I, frankly, do not think that the Congress should get into the business of trying to legislate accounting standards. I don't think we have the expertise or the competence to do it. And it turns established accounting standards into a straight-out political exercise, and I don't think that is wise.

As I understand the Senator's amendment, it would simply reference the issue of the treatment of stock options to the financial accounting standards board, for them to make their own inde-

pendent judgment as to how this matter should be treated, is that correct?

Mr. LEVIN. The Senator is correct.

Mr. SARBANES. And I understand that the terms of reference are such that it does not presuppose a particular substantive conclusion; it is, in effect, left open, or even level, however you want to describe it—a level playing field for FASB, the expert body that has been established to make these judgments to make its own independent judgment as to how these matters should be addressed, is that correct?

Mr. LEVIN. The amendment directs FASB to review the issue and adopt an appropriate standard. Those are the words in the amendment. I must tell my good friend from Maryland, however, that there is a history here that cannot be ignored.

The history is that FASB tried to adopt a standard in 1994. They said what the right standard was. They were beaten back and brow-beaten and pressured, so they had to give up what they believed is right. That is in their own history. Then they recommended to corporations to expense options, because that is the right thing to do. But they offered an option to corporations to simply disclose the value of options in their financial statement in a footnote. They left that option open.

So I have two hopes here. One is that there will not be an objection to a vote on this amendment. For the life of me, I cannot see how anybody can object to a vote on an amendment, which simply tells the independent accounting standards board to reach an appropriate decision.

Now, we did intervene 8 years ago, and I believed it was wrong for us to intervene. Nine of us voted no; 90 voted yes. We told them: Do not change the rule; do not expense options.

In my judgment, it was wrong procedurally and it was wrong in terms of the substance. But it is my hope that, No. 1, we will be allowed to have a vote, and, No. 2, it would be my expectation, however, if it is left to the independence of FASB, that FASB would continue to do what they said was the right thing, which is to expense options.

It is left to their independent judgment to reach an appropriate conclusion under the language of my amendment.

Mr. SARBANES. So it would be FASB's call?

Mr. LEVIN. It would be FASB's call.

Mr. SARBANES. Mr. President, I simply want to say I am supportive of this amendment. I think this is the right way to go about it.

Let me repeat, I do not think the Congress itself should be in the business of legislating accounting standards, but this amendment does not do that. It references the issue to the very body that has been established to accomplish that, which has the expertise and the competence. The amendment also helps to underscore the independence of FASB and a Congressional perception that they should call it as they see it. I hope at the appropriate time the Senator will be able to obtain permission to bring his amendment before the body.

I thank the Senator for yielding.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. I am sorry. I think the Senator from Michigan has the floor.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I ask unanimous consent that I yield to the majority leader for whatever time he wishes to take and that time not be taken from the few minutes I have remaining, and that the floor be returned to me at that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take any time still allotted to the Senator from Michigan.

I hope we can get the unanimous consent request that the Senator from Michigan is propounding. I will also say that this is not a question of if he can get consent and ultimately bring the amendment to the floor. One way or the other we will have a vote on the Levin amendment. It may not be on this bill this afternoon if we fail, but our colleagues need to know we will have a vote on this amendment. This will occur. If I have to offer it myself, we will have a vote on this amendment. So we can do it this afternoon, we can do it tomorrow, or we can do it next week. We are going to have a vote on this amendment. Senators need to take that into account before they object.

Let me say as strongly as I can, this amendment belongs on this bill. This is exactly what I think we ought to be doing, and I think on a bipartisan basis there is strong support for what Senator Levin is proposing.

I want to speak briefly this afternoon, in my leader time, on the amendment itself. I think it is important, as my colleagues have been noting, that the Levin amendment contains precisely the right solution to the difficult problems of determining the proper accounting treatment for stock options. It reserves that judgment for the appropriate body, the Financial Accounting Standards Board. They are the ones given the authority, they are the ones with the credibility, they are the ones with the standing to make the right decisions about this very important and complex matter.

I argue this is the heart of our ability to deal with the accounting reforms that are in the Sarbanes and Leahy bills.

It has become all too clear that accounting standards are complex and can be easily manipulated by aggressive and sometimes unscrupulous corporate executives. Unfortunately, FASB's weak, dependent condition has contributed to those manipulations. In fact, it is arguable that the undermining of FASB's independence was the necessary precondition to the crisis in confidence afflicting our capital markets today.

One of the many virtues of the Sarbanes bill is that it corrects that situation. It provides for a new, improved FASB, giving it for the first time full financial independence from the accounting industry. That certainly is the first and most vital improvement we need with respect to establishing clarity and regularity of accounting standards.

Another needed improvement is for those of us in Congress to allow FASB to do its job. In 1994—and my colleagues have referenced this—when this issue was last taken up by the Senate, I am proud to say I was one of nine Senators who voted against the

Senate intruding itself on FASB's decisionmaking process. That is the only reason I opposed my colleague's amendment last week. As well intended as it is, in my view it did the same thing on the other side that they were trying to do 9 years ago. It asserts Congress's authority to undermine the independence of that board. I opposed it 9 years ago, and I oppose it today, but for obviously different results.

At the same time, the Senate was coming at the options issue from the direction of prohibiting expenses back in 1994, and as I said today the momentum is the opposite, but the right course is the same. Let the experts on the accounting standards board do their job and make the appropriate decision. Eight years ago, the technical accounting questions were essentially the same as they are today, although obviously 8 years have given us an entirely different perspective than the one we had back then. Nonetheless, the questions are still real. Accountants still debate the relative merits of the opposing sides. We still have expert opinion going both ways. On the one hand, the argument is made that if options are not expensed, bottom lines look far more attractive than they actually should be, and the investors can be deceived by the distorted financial pictures that result.

On the other hand, we hear that it is inherently impossible to value options with no concrete reality behind what the options will actually be worth when they are exercised. There is also a real debate about the incentive effects of options.

Supporters argue that they better align an employee's interests with the company's. Opponents contend they result in a "pump and dump" mentality, with senior executives seeking to inflate their stock prices at any cost so they can quickly and cynically enrich themselves.

In contrast to those complex questions, the Levin amendment is simplicity itself. It is one sentence. It says that FASB shall:

> Review the accounting treatment of employee stock options and shall, within one year of enactment, adopt an appropriate generally-accepted accounting principle for the treatment of employee stock options—

End of issue.

The business of setting accounting standards is lodged, by the Levin amendment, in the board that the Sarbanes bill expressly seeks to strengthen and improve. I fully support the Levin amendment and the philosophy behind it. Congress should not be engaged in setting technical accounting rules. We should be seeking to do the reverse: Establish an independent FASB that can help restore confidence in the accuracy of financial information.

I observe in this context that because of that principle, as I said a moment ago, while well intended, I believe the McCain amendment went too far and did exactly what we were trying to do in 1994 but on the flip side. Restoring independence to the accounting standards is one of the overriding objectives of the Sarbanes bill, and that is one of my main reasons for supporting it as strongly as I do. That was my primary reason for voting in 1994 against a previous attempt to direct FASB in its decision about expensing, and it is the primary reason for supporting the Levin amendment today.

So I will end on this particular issue where I began. There will be a vote on the Levin amendment. It will be today, tomorrow, next week, or at some point in the future, but Senators should not be misled. If there is an objection today, it by no means ends the debate. We might as well have it. We might as well get it. We might as well include it in the Sarbanes bill because it will be included in one fashion or another, ultimately, before the work has been done in the Senate on this very important, complex, and comprehensive challenge we face.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. LEVIN. Mr. President, I quote from a few observers what the stakes are in this vote and what the stakes have been in terms of the way in which stock options have not been expensed, have been stealth compensation, have fueled the incredible increase in terms of executive pay, and have been a driving force behind the deceptive accounting practices which have bedeviled this Nation and undermined public confidence in the credibility of our financial statements.

Robert Samuelson, an economist, said the following:

> The point is that the growth of stock options has created huge conflicts of interest that executives will be hard-pressed to avoid. Indeed, many executives will coax as many options as possible from their compensation committees, typically composed of "outside" directors. But because "directors are [manipulated] by management, sympathetic to them, or simply ineffectual," the amounts may well be excessive. . . .
>
> Stock options are not evil, but unless we curb the present madness, we are courting continual trouble.

This is what a retired vice president at J.P. Morgan and Company said: There can be no real reform without honest accounting for stock options. A decade ago, the Financial Accounting Standards Board recommended options be counted as a cost against earnings like all other forms of compensation, but corporate lobbyists resisted and Congress did their bidding. Alan Greenspan and Warren Buffett, among others, are calling for the same change now, but it remains to be seen whether the accounting profession can act without congressional interference. Treating options like other forms of pay would make executive compensation transparent, diminish the temptation to cook the books, and make managers less inclined towards excessive risk taking.

Warren Buffett, who was quoted by Senator McCain last week, said the following: If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? If expenses shouldn't go into the calculation of earnings, where in the world should they go?

A New York Times editorial of March 31 of this year stated:

> We have no quarrel with the business lobby's claim that stock options have helped fuel America's entrepreneurship, particularly in Silicon Valley. But in the interest of truthful accounting and greater financial integrity, options should be treated as what they are, a worthy form of compensation that companies must report as an expense.

Robert Felton, director of McKinsey & Company's Seattle office, said:

Because they have so much at stake with these huge grants, options are likely to have encouraged some managers to cheat and cook the books.

Allan Sloan of Newsweek:

. . . options are a free lunch for companies. . . .

I'm all in favor of employees becoming millionaires via options—I'm an employee, after all—but I'm also in favor of companies providing profit-and-loss statements that show the real profit and loss. Ignoring options' costs and low-balling CEO packages are simply outrageous. When campaigns start expensing options and disclosing true CEO and director compensation numbers, I'll believe that they've seen the light.

According to the Economist, last year, stock options accounted for 58 percent of the pay of chief executives of large American companies. So over half the compensation of our CEOs of major companies now comes from stock options. To leave that expense off the financial statements' bottom line is to distort what is going on at companies. It is part of the reason we have not had accurately reflective financial statements at our corporations. It is part of the reason for the soup we are in right now.

Where financial statements have been giving a false picture of what a company's financial situation is, it has provided stealth compensation in huge amounts to executives, it has watered down the value of stock to the owners of a corporation. That is why now we have such tremendous support from the organizations which represent stockholders.

That is why, for instance, TIAA-CREF, the largest pension fund in the United States for teachers is supportive of changing the accounting for stock options. It is why the Council for Institutional Investors, which is the leading shareholders organization for pension funds, now favors expensing stock options in order to give an accurate reflection of what a company's financial statement is. It is why the AFL-CIO supports the amendments offered last week and the amendment which hopefully will be offered today if we are allowed to have a vote on this.

Alan Greenspan says this is the top post-Enron reform. Expensing stock options is the top post-Enron reform. That is the Chairman of the Federal Reserve. Paul Volcker, former Federal Reserve Chairman, supports a change in stock option accounting. Arthur Levitt, former SEC Chairman, supports the change; Warren Buffett, as we mentioned; and a host of economists. Standard & Poor's believes you have to expense stock options if you are going to show an accurate earnings calculation; Citizens for Tax Justice; Consumer Federation of America; Consumers Union, and on and on.

The Washington Post of April 18 says the following:

. . . expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. . . . But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense.

That is the end of that particular quote. I would like the entire quote printed in the RECORD, and I ask unanimous consent that all the editorials and comments that I referred to be printed in the RECORD in full.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 30, 2002]

STOCK OPTION MADNESS

(By Robert J. Samuelson)

As the Enron scandal broadens, we may miss the forest for the trees. The multiplying investigations have created a massive whodunit. Who destroyed documents? Who misled investors? Who twisted or broke accounting rules? The answers may explain what happened at Enron but not necessarily why. We need to search for deeper causes, beginning with stock options. Here's a good idea gone bad—stock options foster a corrosive climate that tempts many executives, and not just those at Enron, to play fast and loose when reporting profits.

As everyone knows, stock options exploded in the late 1980s and the '90s. The theory was simple. If you made top executives and managers into owners, they would act in shareholders' interests. Executives' pay packages became increasingly skewed toward options. In 2000, the typical chief executive officer of one of the country's 350 major companies earned about $5.2 million, with almost half of that reflecting stock options, according to William M. Mercer Inc., a consulting firm. About half of those companies also had stock-option programs for at least half their employees.

Up to a point, the theory worked. Twenty years ago, America's corporate managers were widely criticized. Japanese and German companies seemed on a roll. By contrast, their American rivals seemed stodgy, complacent and bureaucratic. Stock options were one tool in a managerial upheaval that refocused attention away from corporate empire-building and toward improved profit-ability and efficiency.

All this contributed to the 1990's economic revival. By holding down costs, companies restrained inflation. By aggressively promoting new products and technologies, companies boosted production and employment. But slowly stock options became corrupted by carelessness, overuse and greed. As more executives developed big personal stakes in options, the task of keeping the stock price rising became separate from improving the business and its profitability. This is what seems to have happened at Enron.

The company adored stock options. About 60 percent of employees received an annual award of options, equal to 5 percent of their base salary. Executives and top managers got more. At year-end 2000, all Enron managers and workers had options that could be exercised for nearly 47 million shares. Under a typical plan, a recipient gets an option to buy a given number of shares at the market price on the day the option is issued. This is called "the strike price." But the option usually cannot be exercised for a few years. If the stock's price rises in that time, the option can yield a tidy profit. The lucky recipient buys at the strike price and sells at the market price. On the 47 million Enron options, the average "strike" price was about $30, and at the end of 2000, the market price was $83. The potential profit was nearly $2.5 billion.

Given the huge rewards, it would have been astonishing if Enron's managers had not become obsessed with the company's stock price and—to the extent possible—tried to influence it. And while Enron's stock soared, why would anyone complain about accounting shenanigans? Whatever the resulting abuses, the pressures are not unique to Enron. It takes a naive view of human nature to think that many executives won't strive to maximize their personal wealth.

This is an invitation to abuse. To influence stock prices, executives can issue optimistic profit projections. They can delay some spending, such as research and development (this temporarily helps profits). They can engage in stock buybacks (these raise per-share earnings, because fewer shares are outstanding). And, of course, they can exploit accounting rules. Even temporary blips in stock prices can create opportunities to unload profitable options.

The point is that the growth of stock options has created huge conflicts of interest that executives will be hard-pressed to avoid. Indeed, many executives will coax as many options as possible from their compensation committees, typically composed of "outside" directors. But because "directors are [manipulated] by management, sympathetic to them, or simply ineffectual," the amounts may well be excessive, argue Harvard law professors Lucian Arye Bebchuk and Jesse Fried and attorney David Walker in a recent study.

Stock options are not evil, but unless we curb the present madness, we are courting continual trouble. Here are three ways to check the overuse of options.

(1) Change the accounting—count options as a cost. Amazingly, when companies issue stock options, they do not have to make a deduction to profits. This encourages companies to create new options. By one common accounting technique, Enron's options would have required deductions of almost $2.4 billion from 1998 through 2000. That would have virtually eliminated the company's profits.

(2) Index stock options to the market. If a company's shares rise in tandem with the overall stock market, the gains don't reflect any management contribution—and yet, most options still increase in value. Executives get a windfall. Options should reward only for gains above the market.

(3) Don't reprice options if the stock falls. Some corporate boards of directors issue new options at lower prices if the company's stock falls. What's the point? Options are supposed to prod executive to improve the company's profits and stock price. Why protect them if they fail?

Within limits, stock options represent a useful reward for management. But we lost those limits, and options became a kind of free money sprinkled about by uncritical corporate directors. The unintended result was a morally lax, get-rich-quick mentality. Unless companies restore limits—prodded, if need be, by new government regulations—one large lesson of the Enron scandal will have been lost.

[From the Washington Post, April 18, 2002]

MONEY TALKS

Alan Greenspan, perhaps the Nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffet, perhaps the Nation's foremost investor, has long argued the same line. The Financial Accounting Standards Board, the expert group that writes accounting rules, reached the same conclusion eight years ago. The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the common-sense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. Yet today's Senate Finance Committee hearing on the issue is likely to be filled with dissenting voices. There could hardly be a better gauge of money's power in politics.

Why does this matter? Because the current rules—which allow companies to grant executives and other employees millions of dollars in stock options without recording a dime of expenses—make a mockery of corporate accounts. Companies that grant stock options lavishly can be reporting large profits when the truth is that they are taking a large loss. In 2000, for example, Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profits; the real number was a $2.7 billion loss. By reporting make-believe profits, companies may have conned investors into bidding up their stock prices. This is one cause of the Internet bubble, whose bursting helped precipitate last year's economic slowdown.

It is not surprising, therefore, that the expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. But the dissenters are intimidated by neither experts nor logic. They claim that the value of options is uncertain, so they have no idea what number to put into the accounts. But the price of an option can actually be calculated quite precisely, and managers have no difficulty doing the math for the purposes of tax reporting. The dissenters also claim that options are crucial to the health of young companies. But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense. Finally, dissenters say that options need not be so counted because granting them involves no cash outlay. But giving employees something that has cash value amounts to giving them cash.

The dissenters include weighty figures in both parties. Sen. Joe Lieberman (D-Conn.) is the chief opponent of options sanity in the Senate, and last week President Bush himself declared that Mr. Greenspan is wrong on this issue. What might be behind this? Many of the corporate executives who give generously to politicians are themselves the beneficiaries of options—often to the tune of millions of dollars. High-tech companies, an important source of campaign cash, are fighting options reform with all they've got. But if these lobbyists are allowed to win the argument, they will undermine a key principle of the financial system. Accounting rules are meant to ensure that investors get good information. Without good information, they cannot know which companies will best use capital, and the whole economy suffers in the long run.

[From the New York Times, March 31, 2002]

STOCK OPTION EXCESSES

In his Congressional testimony last month, Jeffrey Skilling, Enron's former chief executive, offered a primer on the misuses of stock options. Options, he said, are the most egregious way for companies to pump up their profits artificially. They also netted him a tidy $62.5 million in 2000 and helped Enron pay no income taxes in four of the last five years.

Stock options, in theory, aren't a bad idea. By giving employees the chance to buy a company's stock in the future at today's price, corporations can provide an extra incentive for hard work and can augment compensation. The New York Times Company awards option to its top executives. But like other rational business practices that got out of hand during the boom years of the late 1990's, options have been abused by some companies and are in need of reform.

A good place to start would be for Congress to end the conflict between how the tax laws and the accounting rules treat employees options. Alan Greenspan, the Federal Reserve chairman, has identified that as one of the most pressing post-Enron reforms affecting corporate governance.

That conflict creates a loophole that has allowed companies to treat stock options as essentially free money during the recent dot-come bubble. A company does not have to report grants of stock options as an expense on its profit-and-loss statements, as it does with other forms of compensation, but it can deduct the options as an expense from its tax liability when employees exercise them.

As a result, corporate executives can award themselves oodles of stock options without fear of denting their profit reports. Once the options are exercised, the company can treat the appreciation in the shares' value—the employees' profit—as an expense for tax purposes. At Enron, stock option deductions alone turned what would have been a Federal income tax bill of $112 million in 2000 into a $278 million refund. Mr. Greenspan said last week that Federal Reserve Board research found that the average earnings growth rate of the S&P 500 companies between 1995 and 2000 would have been reduced by nearly a quarter if the companies had reported their stock options as expenses on financial statements.

A decade ago, the accounting industry proposed a sensible rule to make companies report options as expenses, but it was beaten back by fierce corporate lobbying. Now Senators John McCain and Carl Levin have proposed a bill that would end the double standard, disallowing the tax deduction for any company that fails to report options as an expense.

They are backed in that effort by investors like Warren Buffet and big institutions like pension plans, which are rightly incensed by abusive executive compensation schemes. They are tired of unseemly practices like the repricing of options to ensure that executives still get windfalls if the stock price falls. Making interest-free loans for executives to acquire stock (often forgiven if the bet does not pay off) is another dubious compensation practice.

We have no quarrel with the business lobby's claim that stock options have helped fuel America's entrepreneurship, particularly in Silicon Valley. But in the interest of truthful accounting and greater financial integrity options should be treated as what they are: a worthy form of compensation that companies must report as an expense.

Congress must end the dot-com-era notion that options equal free money. That would be a first step toward reassuring investors that top executives cannot treat publicly traded companies as Ponzi schemes created for their own enrichment.

[From Newsweek, May 20, 2002]

SHOW ME THE MONEY (ALL OF IT)

(By Allan Sloan)

Watching corporate America these days is like watching drunks at a revival meeting. They're vowing to sin no more, to tell shareholders the straight truth instead of playing accounting games, to embrace "transparency" so outsiders can see what's going on. But talk is cheap. When it comes to action on two key reforms—accounting for stock options, and showing the value of chief executives' compensation packages—corporations are as opaque as ever.

The accounting first. As things stand now, options are a free lunch for companies—employees place a high value on them, but companies can issue as many as they want without hurting corporate profits. That's because companies don't have to count options value as an expense. With reform in the air because of Enron, old-

math types like Warren Buffett and Alan Greenspan are pushing to change accounting rules to force companies to count the value of stock options as an expense in their profit-and-loss statements. Accounting rule makers proposed this a decade ago, but backed down under political pressure generated by corporations, especially in options-happy Silicon Valley. Then there's a second, little-known aspect of the options-accounting debate. If companies have to count the value of options as an expense, they would come under huge pressure to report their value as compensation to the CEO, and to members of the board. Under current rules, a company has to show shareholders a table that includes how much it gave the CEO in salary, bonus, long-term compensation and other benefits. But the table has to show only the number of options granted to the CEO, not their economic value. To find that, you have to hunt on other pages—and you may not find it at all if the company opts to report a different way. "The original idea was to have the value of options in the table, not the number of options," says Graef Crystal, a compensation expert who worked on the disclosure rules. But, he says, the SEC backed down after companies objected.

It's easy to see why companies would have been upset at having to count options as compensation. In most pay filings I see these days, the economic value of CEO and directors' options exceeds their cash payments. So counting options would more than double the typical package.

To see how this works, let's look at Dell Computer and Knight Ridder, two companies I just happen to have looked at recently. Dell's most recent statement shows that Michael Dell, its billionaire owner and founder, earned $2.6 million in salary and bonus. Not starvation wages, but not much for a big-time CEO. On a different page, you see that he got options the company valued at $26 million. That's major moolah. Dell directors were paid a $40,000 annual retainer fee, but also got options on $850,000 worth of Stock. The option's economic value: around $300,000. Note that I'm not accusing Dell of hiding anything—it's following the rules.

Dell shows why options have economic value when they're granted, even if the stock subsequently falls. The directors got their options when Dell stock was about $52, double today's price. By getting options on $850,000 of stock rather than buying 16,298 shares, directors avoided losing money—and didn't have to tie up $850,000. Meanwhile, they had the same upside as regular investors who risked $850,000. The company says its compensation packages are skewed toward options, so that employees and directors don't make out unless regular stockholders do.

Now to Knight Ridder, which has been on a cost-cutting kick for years. Last year chairman Tony Ridder got $935,720 in salary and no bonus. He also got options on 150,000 shares. Knight Ridder values the options at about $1.6 million, but by most rules of thumb, they were worth twice that much. Knight Ridder directors got a $40,000 annual fee—and 4,000 options. The options were worth about $42,500 by Knight Ridder's math, about $85,000 by conventional math. Knight Ridder says its figures are lower because it assumes its options are exercised much quicker than other analysts assume.

I'm all in favor of employees becoming millionaires via options—I'm an employee, after all—but I'm also in favor of companies providing profit-and-loss statements that show the real profit and loss. Ignoring options' costs and low-balling CEO pay packages are simply outrageous. When companies start expensing options and disclosing true CEO and director compensation numbers, I'll believe they've seen the light. Until then, I'll assume that they're still on the bottle.

[From the Wall Street Journal, May 3, 2002]

ACCOUNTING FOR OPTIONS

(By Joseph E. Stiglitz)

Déjà vu. The post-Enron imbroglio over stock options is a reminder that history—if forgotten—does indeed repeat itself. Eight years ago, while serving on President Clinton's Council of Economic Advisers, I was involved in a heated debate over information disclosure. The Financial Accounting Standards Board had proposed a new standard that would require firms to account for the value of executive options in their balance sheets and income statements.

When FASB made its proposal for what would have clearly been an improvement in accounting practices, Silicon Valley and Wall Street were united in their opposition. The arguments put forward then are the same as those put forward today, and they are as specious and self-serving now as they were eight years ago.

OUTRAGEOUS

The most outrageous argument—but the one that had the greatest impact—was that disclosing the information would adversely affect share prices. That is, if people only knew how much their equity claims on the firm could be diluted by options, they would pay less for their shares! True, and that is precisely why the disclosure is so important. Markets can only allocate resources efficiently when prices accurately reflect underlying values, and that requires as good information as possible. If markets overestimate the value of a particular set of ventures, resources will mistakenly flow in that direction. This is partly what caused the dot-com and telecom bubbles. Irrational exuberance played its part, but so too did bad accounting—i.e., distorted information.

To be sure, information will never be perfect and asymmetries of information are pervasive. But one of the key insights of the modern theory of information is that participants do not always have an incentive to disclose fully and accurately all the relevant information, and so it is important to have standards.

This is where the second specious argument enters: Critics of FASB's proposal claimed that it is impossible to value options accurately, and accordingly, it would be misleading to include the options within the standard accounting frameworks. To better understand the falsity of this argument, let's take a closer look at how stock options really work.

The basic economics of stock options are simple. Issuing stock options does not create resources out of thin air. Executives like stock options because they have value. But the value however measured, comes at the expense of other shareholders. The right of managers to buy shares is the right to dilute the ownership claims of existing shareholders. When markets work well—when information is good—the market will value today the issuance of a right to dilute, even when that dilution may never occur, and if it does occur, would happen sometime in the future.

The existing owners of the firm will participate less in the upside potential of the market them they would have in the absence of the options. In principle, they can calculate the circumstances when the executives are likely to exercise their options, and therefore can calculate the diminution in their potential gains from owning shares in the company. That is why when this information is disclosed in ways that can easily be understood by investors, it will lead to a fall in the company's share price.

Making such calculations, however, is not easy or costless. In principle, each shareholder could go through each of the items in the firm's accounts to construct his own "estimates" but that would be a foolish waste of resources, and the transaction costs would put a major damper on capital markets and the market economy. That is why we have accounting standards. Such information is like a public good: Better standards—more transparency—lead to better resource allocation and better functioning markets; and if participants have more confidence in markets, they will be more willing to entrust their money to markets.

Which brings us back to the argument that it is "impossible" to value options. Companies do, of course, have ways of calculating the value of options and do it themselves all the time for their own internal planning purposes.

AS for the question of whether an estimate based on a publicly-disclosed formula would be misleading, because it is only an estimate, that is true of many line items that are central to our accounting frameworks, such as depreciation, 'Calculations about the value of options would be just as, or even more, accurate than standard depreciation estimates are of the market value of the declines in asset values that come with use and obsolescence—something which is a line item on every accounting framework in corporate America and most of the world. Of this much we can be sure: zero, the implied valuation used by companies now when describing the cost of options in their balance sheets and income statements, is a vast underestimate.

Those who argue against including options within the standard accounting frameworks try to have it both ways: They believe that market participants are smart enough to read through dozens of footnotes to figure out the implications of options for the value of their shares, but so dumb that they would be misled by the more accurate numbers that would be provided under the reform proposals, and unable to redo the calculations themselves.

TRANSPARENCY

There is one more reason for the U.S. to be resolute in improving our accounting standards by including better accounting for options. During the East Asia crisis the U.S. preached the virtues of transparency but then refused to do anything about regulating the murky world of offshore banking. America also preached the virtues of our accounting standards only to find that the world was laughing at Enron and

Arthur Andersen. Tightening our rules on accounting of options would signal that the U.S. is serious about openness, serious about improving its accounting standards—despite the special interests opposed to changes—and willing to learn from its mistakes.

Many of the same forces that allied themselves in the 1990s against changes in accounting for options are now trying to suppress this attempt to make our market economy work better. In the earlier episode, the National Economic Council, the U.S. Treasury, and the Department of Commerce intervened in what was supposed to be an independent accounting board, and put pressure on FASB to rescind its proposed regulations. They won, and the country lost. Today, there is a risk once again of political intervention. At least this time, the voices of responsible economic leadership, such as Alan Greenspan, are speaking out. I only hope that this time they will succeed.

Mr. LEVIN. Mr. President, the Republican staff of the Joint Economic Committee put out a report called, "Understanding the Stock Option Debate."

They have gone through a lengthy analysis dated July 9, 2002, in which they conclude the following:

> Existing accounting principles provide an unambiguous answer. Stock option awards should indeed be treated as a cost in financial statements.

It is quite clear to me that two things are true. No. 1, that how we treat stock options is an essential part of the post-Enron reform effort. That is No. 1. No. 2, it seems clear to me that there is at least a likelihood that a majority of this body, if allowed to vote on this amendment, will vote to refer this matter to an independent accounting standards board which has its own source of revenue, free from the kind of pressure which it was under in 1994 and 1995, to reach an appropriate conclusion.

Do I believe that conclusion will be the same as they reached in 1994? I do. It is very clear to me they would reach such a conclusion and should reach such a conclusion. But as our colleagues have pointed out, that is up to the board under this amendment. We would not be adopting a standard.

In all honesty, I expect they would continue on the same course they were on 8 years ago when they were violently thrown off course by people who had control over the purse strings of the organization. I would expect that would happen. But under this amendment, it is their call, not ours.

I support the McCain amendment because I believe, as I believed then, that the accounting standards board wanted to expense options and that we, in executive pressure, interfered with that decision on their part. That is why I believe Senator McCain's amendment is also appropriate. But we cannot even get a vote on that amendment. Last week, we were not able to bring that amendment to a vote.

But this amendment is different. This amendment says to the independent board: review this issue. Make an appropriate decision within a year.

For the life of me I not only do not see how folks—regardless of the side of this particular issue that they are on—could vote against such an amendment when it does not tell them what to do but just asks them to review it and decide within a year as to what the appropriate accounting method is. I do not understand why, in the middle of a debate on the reforms which are essential to restore

public confidence after the Enron fiasco, this Senate should not be allowed to vote on this issue on this bill.

When the majority leader announced that one way or another we will get to a vote on this amendment, I was glad to hear that. I didn't know he was going to say that, but I certainly was glad he said that. But it seems to me that adds a reason we ought to vote for this amendment on this bill.

This is the right place. Surely it is the right time. There has perhaps never been a more critical moment in our economic history in the last few decades than we are facing right now, to help us restore public confidence. It will be an additional contribution to that restoration of public confidence if we take this action. If we say yes, 8 years ago we did intervene, but now we don't want to tell the accounting standards board that they should not expense options. That was 8 years ago. What we are telling them now is: Do the right thing.

We know what they tried to do 8 years ago. It is laid out in the record by them. They wanted to do what they believed was the right thing. If they had done so, they would have been put out of business.

Now we have an opportunity, it seems to me, to do the right thing ourselves, which is to tell the board that has the responsibility to adopt accounting standards, to adopt what they believe is the appropriate standard. That is the right thing to do.

Mr. REID. Will the Senator yield for a question on my time?

Mr. LEVIN. I will be happy to.

Mr. REID. Is the Senator aware that the stock market, the Dow as of now is down 338 points as of today?

Mr. LEVIN. I was not aware of that. But it surely adds an additional urgency, if we need additional urgency, for why we should do everything in our power to restore public confidence in the financial systems in this country.

I left off one of my cosponsors before. Senator Biden is a cosponsor of the amendment, which is at the desk.

I will ask unanimous consent we be able to vote on that at a later moment.

I wonder if I could ask the Chair how much time I have remaining.

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. LEVIN. I understand Senator McCain would like to speak at this time. I see the Republican manager on the floor, so I do not know if this fits his particular timetable or not.

I ask unanimous consent I be allowed to yield to Senator McCain on his——

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, at this time I ask unanimous consent to lay aside the pending second-degree amendment, No. 4286, and call up for consideration my amendment 4283, on stock options, which is a second-degree amendment to the Edwards amendment No. 4187.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, reserving the right to object, let me say there is something on which I agree with the majority leader.

That is, at some point we are going to make a judgment on this issue. But we are currently in a situation where we have 97 first-degree amendments that have been filed. We have 24 second-degree amendments. We have 3 different approaches to this issue.

Senator McCain wants to make a decision and set a policy.

Senator Levin, as I read it, wants a fair trial and then a hanging.

And Senator Enzi and others would simply like to have a fair trial.

What is the right outcome? I think that is subject to debate. That is why I think we ought to have the debate. The idea that when we have three different approaches, we are going to decide that one of them is going to be debated on, voted on, but not all three of them is something we should not expect to happen.

I do not support Senator McCain's amendment, but he has every right, it seems to me, to have it considered. And I am certainly willing to vote on it. There may be people who do not want to vote on this issue, but I am not one of them. So I certainly do object. I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. Mr. President, the only way we are going to get to debate and votes is if we allow the pending amendments which are the first- and second-degree amendments to be voted on so we can move to other amendments without having one gatekeeper denying opportunity for all the others on this floor to offer amendments and have them voted on. That is not the intention of cloture and postcloture.

I do not believe this process has been used in this way before, where, postcloture, germane amendments are supposed to be taken up and voted on, where first- and second-degree amendments have not been disposed of so they can be used, not with the consent of their sponsors, but they are used by others to block consideration of the amendments.

The Senator from Texas says he would like to have a debate and vote. There is one way to do it. Let's dispose of the second-degree amendment, take up the Carnahan amendment and vote on it, take up the Edwards amendment and vote on it.

Mr. GRAMM. Will the Senator yield?

Mr. LEVIN. I will be happy to yield on the Senator's time.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object, Mr. President, the Senator from Michigan is claiming his 1 hour. I understand he has been yielding back and forth. I assume we could, under these circumstances, have one Senator run the entire 30 hours, as long as they keep yielding to other Senators.

There are others of us, of course, who want to be heard and who want to offer amendments.

Mr. GRAMM. I think that is fair. I withdraw my request.

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think if we want to deal with this issue today, probably the way to deal with it is to have a unani-

mous consent agreement and have a vote on all three amendments—have a vote on Senator McCain's amendment, have a vote on the Levin amendment, have a vote on Senator Enzi's amendment so that we would have the full range of choices. But to suggest that nothing is standing in the way except a few obstacles to everybody having their will is to neglect the fact that 97 amendments have been filed as first-degree amendments and 24 second-degree amendments.

So, therefore, by definition, I assume if I suggest and ask unanimous consent that each and every amendment be voted on, someone would object since our leadership has plans for this week and next week. I think it might be possible if we want to deal with this issue today to have a unanimous consent agreement where Senator McCain would get a vote on his amendment, where the Senator from Michigan would get a vote on his amendment, and where Senator Enzi would get a vote on his amendment. Then we would have a range of choices.

I would be amenable to such an agreement if the Senator wanted to shop that around on his side of the aisle. We could do a hotline and see if it would fly. But in the absence of some agreement where the other two gradations on this spectrum of opinion would have their day to debate this amendment and have it voted on, I don't think we are going to be able to do that. It might very well be that we need a separate bill to deal with this issue. If a Senator were to offer this amendment in earnest, I would want an opportunity to amend it. I think having FASB look at this issue—which they are certainly going to do after this bill is agreed to because this is going to be a self-funded agency, and they are going to have greater independence—I think having them look at it is something that we ought to do. But I think we shouldn't pretend to ourselves that the Levin amendment is a neutral amendment.

Asking them to look at it when it mandates by law after having looked at it that within 12 months they adopt in appropriate generally accepted accounting principles for the treatment of employee stock options—there is nothing neutral about that; in other words, study it and within a year adopt a rule.

As I understand it, Senator Enzi and others would have the SEC do a study and make a recommendation based on their study.

If this amendment were going to be dealt with in isolation, I would want an opportunity to at least leave it to FASB as to what they determine rather than mandating that they ought to issue a new accounting principle. It may be that they would determine not to do that.

Let me reiterate that I don't have any concern about voting on this issue. Maybe I should reserve my time. I want to speak on this at some point. We have several Members here who are going to speak. I have to be here for the whole time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. I don't think this is necessary. But so there is no question about it, I ask unanimous consent that the time Senator Daschle used be counted against the 30 hours.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I did not hear.

Mr. REID. I wanted Senator Daschle's time to be counted against the 30 hours.

Mr. GRAMM. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are in a postcloture period of some 30 hours. I understand we will complete that at 6 o'clock or so this afternoon.

What is happening here is really an outrage, from my standpoint. We are in postcloture. I have a germane amendment. I have been here every single day since this bill came to the floor of the Senate prepared and ready to offer my amendment. Now, post-cloture, I have a germane amendment. And the only way, apparently, that I can offer my amendment is if the Senator from Texas is willing to allow me to offer it. That is not the way the Senate should work.

I want to briefly describe my amendment.

My amendment requires the disgorgement of profits, bonuses, incentives and so on that the CEOs of corporations receive 12 months prior to bankruptcy.

That is not in the bill at the present time. It ought to be in the bill.

The bill contains a disgorgement provision requiring the return of incentives and bonus payments received prior to a restatement of earnings. I support that being in the bill, but there is nothing about the requirement to divest all those bonuses and incentive payments 12 months prior to bankruptcy. That ought to be in this bill.

Let me describe some of the problems that we are dealing with. We have been holding some hearings over in the Commerce Committee on the subject of Enron. Here is what some Enron officers got before Enron went bankrupt:

Kenneth Lay, $101 million; Ken Rice, $72.7 million; Jeffrey Skilling, $66.9 million; Stan Horton, $45 million; Andy Fastow, $30.4 million.

They did pretty well at the top. Of course, they have already filed bankruptcy with their corporation.

Should some of this be given back?

I have a constituent in North Dakota who wrote to me and said: I worked for Enron for a good many years. I built up a retirement fund of $330,000. It is now worth $1,700. That was my family's retirement fund. What am I to do? I have lost it all.

But not everybody lost it all with respect to Enron. Those close to the top made a fortune, and the folks at the bottom lost their shirts. Most of the investors and employees lost everything.

The question I ask with my amendment is, Should we include a provision in this bill that requires the give-back of this unwarranted compensation in the form of bonuses, incentives, and various things 12 months prior to bankruptcy? The answer is, of course, we should require it. We ought not to be debating this. This amendment ought to be accepted.

Let me describe some of the other folks who believe this ought to be done.

Mr. Richard Breeden, former SEC Chairman from 1989-1993 says:

> We have long required officers and directors to disgorge "short-swing" profits for purchases and sales within a six-month period . . . we should consider disgorgement to the company of any net proceeds of stock sales or option exercises within six-months or a year prior to bankruptcy filing.

That is Mr. Breeden, former SEC Chairman.

Henry Paulson, CEO, Goldman Sachs, who worked in the Nixon Administration, said:

> The business community has been given a black eye by the activities of and behavior of some CEOs and other notable insiders who sold large numbers of shares just before dramatic declines in their companies' share prices . . . in the case of CEOs and other inside directors, we should raise the bar and mandate a one year "claw-back" in the case of bankruptcy, regardless of the reason.

He is right. This bill doesn't require it. There is no "claw-back" in this bill. There ought to be 1 year prior to bankruptcy.

I don't mean to diminish the importance of other issues that we have just discussed. The other issues are very important. On the issue of how stock options are treated, in 1994, I was one of nine Senators who voted against the proposal back then that would handcuff FASB. I come to that issue with fairly clean hands.

Let me say that while that issue is important, I have been here every single day this bill has been on the floor to offer this simple amendment on disgorgement in the face of bankruptcies. If there are people in corporations at the top of those companies who make $100 million or $70 million or $50 million, and then the company files for bankruptcy, do you not believe that some of that ought to be required to be given back? The folks at the bottom lost everything they had. They lost their life savings. They lost everything, and the folks at the top got rich. Shouldn't there be a requirement in this bill to disgorge those profits? Does anybody think that is unreasonable?

The Senator from Texas left the Chamber as I was beginning to speak. I was hoping I might get his attention. But as I understand where we are, we have a first- and a second-degree amendment. The first-degree amendment is the Edwards amendment. It is followed by a second-degree amendment, which is the Carnahan amendment.

In order for anyone to offer an amendment postcloture today, we must ask consent to set aside these amendments so we can offer our amendment. My understanding is, if someone here does not agree with that, then he can prevent that from happening. My understanding is that that is precisely what would happen.

So the result is, for the next 5 hours, we will have gatekeepers who require us to say: Captain, may I? May I offer an amendment? And they will say: No, you may not. We will not allow the setting aside of the pending amendments.

So we will limp along to the end of the 30 hours not being able to offer germane amendments to this bill. It is outrageous, simply an outrageous process that puts us here. I think there will be a good number of Members of the Senate who, in the future, will consider this and find ways to avoid our being put in this position again.

But what I would like to do is have a debate about this amendment at some point. And perhaps there are people in the Senate who want to stand up and say: Do you know what I think? I think if somebody takes home $50 or $80 million 6 months before bankruptcy, in the form of incentive payments and bonuses, they ought to be able to keep it, even if they drove this company right straight into the ground.

Is there one person who will stand up in the Senate today to support that? Does one person want to support that position? Well, we will see.

In the year before the Enron Corporation filed for bankruptcy, Kenneth Lay, the chairman of that company, and 140 other company officials received $310 million in salaries, bonuses, long-term incentives, loan advances, and other payments.

Does anybody here want to stand up and say: "That makes a lot of sense."? Anybody? Does anybody agree they should keep all that money? Do we hear nothing because they don't have the floor, or is it that nobody here believes the top officials of Enron should keep $310 million prior to filing for bankruptcy, where their employees lost they jobs, lost their life savings in their 401(k)s, their investors lost their money?

How about NTL, Incorporated? It is a Manhattan TV cable operator that filed for bankruptcy in May, just several months after it gave its chief executive officer $18.9 million. It made him one of the 30 highest paid CEOs in New York, putting him ahead of IBM's Louis Gerstner. That company had $14 billion in losses. And the CEO, Mr. Knapp, had a salary of $277,000, a bonus of $561,000, and stock options worth $18 million.

So does anybody here think he ought to keep all that money, just let the investors and the employees lose, but the people at the top keep it—just walk away on some gilded, golden carpet?

There are plenty of other examples, of course.

In recent months, we have heard all of these discussions about what has happened at the top in the boardroom by companies that wanted to find the line, and then go right to it, and then go across it, if they could. And there are accounting firms that were the enablers, who said: Yes, go ahead and do that. And the law firms were on the side, collecting big fees, saying: Yes, go ahead and do that—and the CEOs without moral conscience. The result is, they got rich and the little folks got broke.

My amendment is very simple. My amendment says that 1 year prior to bankruptcy, if you are getting the big bucks, big bonuses, big incentives, big stock options, and you want to take off with $50 or $100 million, and leave everybody else flat on their back, you cannot do it; you have to give it back. Very simple.

No one can misunderstand the amendment. This amendment is not strange or foreign to anyone. This bill will fall short of the mark, this bill will be incomplete, if we just proceed now to the final vote this afternoon and we are told: You cannot offer this amendment. We will not consider this amendment. And we do not want to require the give-back of millions of dollars by CEOs who receive that money prior to bankruptcy.

If that is the message this Senate sends from this bill this afternoon, this Senate has a lot of explaining to do.

We came to this debate with great promise. I have been to the floor a couple of times complimenting the Banking Committee, complimenting all on the Banking Committee who worked to put this bill together. But I said there were areas where it needed to be improved. This is one of them. This is the lightest load you will ever be asked to carry, in my judgment, to support an amendment of this type: The disgorgement of ill-earned profits by CEOs who led their corporations to bankruptcy but waltzed off with millions of dollars in their pockets and left everyone else—the bondholders, the stockholders, the employees—holding the bag.

This is not heavy lifting, to do this amendment. It is absurd if the Senate says: No, we will have nothing to do with that. Our position is, let's call this corporate responsibility. Let's change the accounting standards. But, by the way, let's let those people who essentially looted the corporation from the top—drove it into bankruptcy, and then left town—let's give them a big wave and say: So long, God bless you, and I hope your future is a good one with all those millions of dollars. If we do that, this Senate has a lot of explaining to do.

A good many corporate leaders, respected business officials in this country, have said this must be in a bill, this should be in a bill, there is no excuse for it not being in a bill.

So I have amendment No. 4214 at the desk. Let me ask unanimous consent that we set aside the Carnahan amendment, which is a second-degree amendment to the Edwards amendment, for the purpose of allowing consideration of amendment No. 4214. Let me make the first unanimous consent request first.

I ask unanimous consent that we set aside the Carnahan second-degree amendment for the purpose of considering my amendment.

The PRESIDING OFFICER (Mr. WYDEN). Is there objection?

Mr. ENZI. On behalf of the ranking member of the Banking Committee, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, let me say, again, I think the process is an outrage—an outrage. We are in a situation today where we have 4 or 5 hours left postcloture, and we are told that no one in the Senate has a right to offer an amendment because someone has set himself up as a gatekeeper saying: I will object to setting aside the Carnahan second-degree amendment.

What kind of a way is that to legislate? Is someone afraid he will lose on this amendment, that he will lose the vote? Is that the purpose of the objection, that he is afraid we will have a vote, Senators will vote for my amendment, and therefore he will lose, so the words "I object" become a proxy for avoiding a loss on an important amendment?

How many votes do you think would exist in the Senate for saying: We want to enable CEOs, who ran the corporation into the ground and took $20 million out and then filed bankruptcy, to keep the money; we want them to keep the bonus, to keep the stock option, to keep the commission payment, to keep the money? How many votes do you think exist for that? Ten, maybe 12? Probably zero.

I think the Senator from Virginia is correct. Probably no one would stand up and support that proposition. So the question is

why are we not allowing amendments to be voted on this afternoon? I would be happy to yield to someone to answer that. Is there someone who can answer that? Perhaps we could find out on whose behalf the Senator from Wyoming objected.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Dakota has 29 minutes remaining.

Mr. DORGAN. Parliamentary inquiry: Are we entitled, as a Senator, to 1 hour postcloture, those of us who are recognized?

The PRESIDING OFFICER. The Senator from North Dakota is correct.

Mr. DORGAN. Several of my colleagues wish to speak. I want them to be able to speak. I hope they will offer amendments.

I will guarantee them this: I will not be objecting to an amendment if they want to offer them. They have a right to offer an amendment today. They have a right to get a vote on the amendment. I will not object to that.

The parliamentary inquiry is, I have just made a unanimous consent request that has been objected to. Am I prevented from making an identical request following the presentation by the two Senators on the floor?

The PRESIDING OFFICER. The Senator is not prevented from making unanimous consent requests.

Mr. DORGAN. That will give me some time then to snoop around the cloakrooms and the corners and the nooks and crannies in the Capitol to find out who won't come to the floor and answer the question I have asked.

Why will we not get a vote on the simple proposition that those corporate leaders who run their corporation into bankruptcy and who take $10, $20, $30, or $50 million out of it just prior to bankruptcy—why will we not allow a vote on an amendment that would require them to disgorge themselves of that profit? Why should that ill-gotten gain not be used to help the employees, help the investors, help others recover, who lost everything? Why should one group in this circumstance walk off into the sunset with a pocketful of gold, leaving everyone in their wake, employees, investors, and others who lost everything they had?

Perhaps in the next hour or so, I will find someone in the Chamber or in the anterooms who will say: I am the one who decided you should not get a vote because I believe that those CEOs ought to be able to get away with that money; that is the American way.

My guess is the Senator from Virginia was right when he shook his head. I think this amendment passes 100 to nothing or very close to that, and I hope he and others will help me get it to a vote before 6 o'clock.

Obviously I am a little irritated about the process. It stinks. That is not a genteel way to say that. But postcloture, if we have germane amendments, we should be able to be here to offer those amendments. That is not now the case.

I will be here the next couple of hours trying to see if we can find a way to cause enough trouble in as short a time as possible to allow these amendments to be offered.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I would like to use a portion of my 1 hour of time to say I agree with the purpose and the intent of the Dorgan amendment. I understand Senator Grassley of Iowa has a similar amendment that would disgorge or claw back into some ill-gotten gains of executives for the benefit of creditors and victims of their malfeasance or illegal acts.

I wish to speak not on process. Although, process seems to drive a lot of what happens in this body.

I would like to talk to my colleagues and the American people about the merits of certain ideas or the demerits of certain ideas that have been raised. There have been several measures dealing with the issue of stock options.

Senator McCain's measure was a direct hit. I don't like it, but it was an accountable approach in getting rid of or killing stock options. We had Senator Levin's amendment, with Senator McCain, which was more of an indirect or ricochet killing of stock options by granting that study to FASB, when everyone knows what FASB's position is.

There is another option regarding stock options which I would like to discuss as the approach that ought to be taken. The majority leader, Senator Daschle, mentioned that we may have a vote on it today. We may have a vote on it tomorrow, but some day we will have a vote. There ought to be a full and fair discussion of the approach we ought to take as well as what the potential adverse impacts could be if either the study by FASB or the direct killing of stock options, as far as requiring the expensing of them, were to occur.

The more wise and prudent approach is one that was chiefly sponsored by my good friend Senator Enzi of Wyoming, along with Senators Lieberman, Boxer, myself, and others who joined with us, Senators Murray, Cantwell, Bennett, Wyden, Lott, Burns, Frist, Craig and Ensign. Our amendment is a more comprehensive, reasonable alternative that has the Securities and Exchange Commission review and make regulatory or legislative recommendations to Congress.

Clearly, in today's climate, with the stock market dropping again today, with the scandals from Global Crossing, Enron, the crisis at WorldCom, it is axiomatic that there is a pressing need for accounting reform to address the corporate abuses and accounting firm malfeasance. The bill, as it is presented, is a very good bill. I think it addresses the two key areas that need to be addressed.

It is focused, number one, on transparency. That means that people can readily and easily discern the true financial condition of a company in which they may want to invest.

Secondly, you need deterrence, stiffer criminal and civil sanctions for illegal actions by corporate officers. There may be a few things added to make it better, but this bill essentially addresses those two focused goals. Indeed, enhanced transparency and improved corporate governance may restore some investor confidence and foster proper disclosure for investment decisions. More stringent penalties will provide a deterrence and substantial disincentive for the corporate wrongdoing that has led to this understandable firestorm of skepticism as a fallout from the scandalous, fraudulent misrepresentations by executives in many companies.

In our effort to reform, we must not enact measures that stifle innovation and endanger the American entrepreneurial spirit. Congress should not harm future opportunities for employees to own a part of their company for whom they work. Unfortunately, the Levin-McCain amendment does just that by unjustifiably upsetting the current tax treatment of stock options. It is unnecessary and unwise to change these particular accounting policies.

It is virtually impossible to accurately determine the worth or value of a stock option.

Now, how are you going to predict the future performance of a company? How are you going to predict the future share value of a company, especially with the vicissitudes of the stock market these days? For example, somebody is granted a stock option by a company—a new company—and the stock is trading, after an IPO, at $5 a share. The option to this employee is to be able to purchase 1,000 shares of that company at $10 a share.

Now, nobody is going to exercise a stock option until the share value reaches the strike price, or $10, and it may never get to $10. It may take 5 years before that share value gets above $10 a share, where somebody would exercise the option. So it is very difficult to determine what is the actual value of that stock option when it is granted.

The amendment Mr. Levin has proposed will affect current law. Currently employers are not required to expense stock option grants on their financial statements. But they are permitted to deduct the employees' gains at exercise—that is, down the road—as a compensation expense.

Now, this makes good sense. After all, a stock option grant does not require a cash outlay like other expenses such as wages.

Moreover, there is no transparency problem with failing to expense stock option grants because they are disclosed on the company's financial statement. If somebody says there ought to be better disclosure, or it should be in bolder print, or it should be highlighted more and the disclosure needs to be more clear, that is fine. But I don't think it is necessary, in the midst of better disclosure and transparency, to kill this otherwise largely salutary idea and beneficial idea of stock options. Nonetheless, the amendments by Senators McCain and Levin mandate that any company taking a deduction must report the stock option as an expense on their income statement, profit and loss statement, and the deduction may not exceed the reported expense.

Mr. LEVIN. Will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. LEVIN. Is the Senator aware that the Levin-McCain amendment he is referring to is not the amendment being offered at this time? There is another amendment, and they are totally different matters involving the taxation issue. This is not a taxation amendment at all. Hopefully, it will come before the Senate today.

Mr. ALLEN. Mr. President, I say to the Senator from Michigan, I understand his amendment offered today was one to have FASB study the issue. Senator McCain's amendment was one to require the expensing of stock options. I realize they are two different matters.

Mr. LEVIN. And that neither one addresses tax issues. That is a totally separate bill, not in either the McCain-Levin or the Levin-McCain accounting standard.

Mr. ALLEN. I say to the Senator that in the event you, in effect, require the expenses of stock options, that does affect the tax treatment and the desirability of stock options.

Mr. LEVIN. Thank you.

Mr. ALLEN. I thank the Senator from Michigan.

Now, the problematic aspect of these ideas is that, if you take away the current method of accounting and taxation of stock options, a company can only take a deduction up to the amount they expense at the time of the grant. Since the expense would be taken at the time of the grant, the tax deduction would be taken at the time of the exercise. If the value was too low at the time of the grant, then you are not going to get the full extent of your deduction. So the point is that if we are not careful here, with all these approaches of changing the tax treatment, changing the expensing rules, or having it be done by FASB, the result is a convoluted tax increase on companies.

Now, what will happen if these tax increases or this inability to actually determine the value of the stock option occurs, which may or may not be exercised at some unknown future date, all of this consternation, inaccuracy, unpredictability—the potential of actually a tax increase, in effect—many companies will find this tax and accounting scheme is so onerous they will discontinue offering options to all but maybe a few senior executives who can bargain for them.

I think the idea of doing away with stock options, or making them less desirable, is a substantial detrimental impact on not only companies but many, particularly those companies in the high-tech sector and small startups. New businesses have powered our economy in the last decade and, hopefully, they will do so in the future. Small companies motivate employees with stock options. That is the way they keep employees. Especially the startups who will get folks to serve on the board and pay them for that service in stock options.

I think it is a good idea for people to care about a company doing well in the future; not only looking for a paycheck, but also caring about how well a company will do.

Indeed, in the last 10 years, the number of workers who received stock options has grown dramatically—from about 1 million in 1992 to 10 million today. First, as I said, the benefits of stock options has enabled companies to recruit and keep quality workers. Absent stock options, many smaller companies lack the capital. They don't have the money to attract top-notch talent. Investors will be less likely to invest in companies that retain stock option plans because the company's earnings will be artificially deflated by this phantom expense.

Finally, and perhaps most important, stock options enhance productivity by providing employees with a greater stake in their company's performance.

Mr. President, these options are particularly important to rank and file employees who receive relatively modest salaries and wages. There is one company that has a pretty good presence in

Virginia—Electronic Arts—which recently told me that stock options enabled many of its employees to purchase their first homes, to send their children to college, or to provide for their aging parents. Thus, the desirability of stock options as incentives is readily apparent, and we should not adopt any measure that would effectively eliminate their use as a form of employee compensation.

That is not to say that I oppose all stock option reform. In fact, I fully support President Bush's proposal that requires shareholder approval for stock option plans. I think the idea of equitable treatment in the exercise of options by employees or executives is well founded. But I am joining with Senators Lieberman, Boxer, Enzi, and others in offering the amendment that directs the Securities and Exchange Commission to conduct a comprehensive study and to make recommendations regarding the accounting treatment of stock options, which is the way to go.

We may introduce this proposal as a free-standing bill. Maybe we will not vote on it today but here is the approach that we ought to take. The SEC will conduct an analysis and make regulatory and legislative recommendations on the treatment of stock options in which the Commission shall analyze the following: No. 1, the accounting treatment for employees' stock options, including the accuracy of available stock option pricing models; No. 2, the adequacy of current disclosure requirements to investors and shareholders on stock options; No. 3, the adequacy of corporate governance requirements, including shareholder approval of stock option plans; No. 4, any need for new stock holding period requirements for senior executives; No. 5, the benefit and detriment of any new option expenses rules on, A, the productivity and performance of large, medium, and small companies and startup enterprises and, B, the recruitment and retention of skilled workers.

The Commission shall submit its regulatory and legislative recommendations to Congress and supporting analyses of those matters as far as any changes indicated in the treatment of stock options within 180 days.

In my view, this is the reasonable alternative we ought to be taking. I urge my colleagues to support this approach rather than adopting, whether it is today or in the future, Senator McCain's measure that he introduced last week or Senator Levin's study today. I think either of those would be harmful and damaging to both American industry and to working men and women.

The Senator from Michigan mentioned evidence, or observations, of others as to the impact of his recommendations and his amendment. I think it is very good for us to look at what people who will be affected say about the measures that are passed in the Senate. I think it is important that we be accountable to those who are affected and we should listen to them.

I have some other observations, as far as the issue of stock options is concerned. This first I will share is the views of the Information Technology Industry Council. They expressed their support for the potential alternative amendment cosponsored by Senators Lieberman, Enzi, Boxer, and Allen that would direct the Securities and Exchange Commission to examine the accounting treatment of stock options and make recommendations.

The Information Technology Industry Council stated that, in particular, those entrepreneurial high-tech companies that are willing to take the risk in the pursuit of technological innovation have offered stock options as an incentive to attract and retain employees.

Unfortunately, the expensing of options would end the practice of providing most employees with stock options. The result would be a reversal of the trends toward employee ownership and a significant reduction in financial opportunities for thousands of workers.

Let me share another observation, and this comes from the Telecommunications Industry Association, and I read, in part:

> This sense of personal ownership referring to stock options helps develop the innovative entrepreneurial spirit that has characterized the high tech industry over the last decade. Should the rules for options suddenly change and be treated as a cash expense, the number of employees that receive the benefit would be drastically reduced, most likely leaving only members of the top management as recipients.

They conclude with this comment:

> Adoption of this type of measure is a knee jerk reaction to situations such as occurred with Enron, which is not what we need. It is not in the best long-term interest of our country.

Another observation from a large group of trade associations: American Electronic Association, Bankers Association, Alabama Information Technology Association, the Arizona Software and Internet Association, Biotechnology Industry Organization, Business Software Alliance, Information Technology Association of America, National Association of Manufacturers, the Retail Federation, Semiconductor Equipment and Materials International, as well as the Semiconductor Industry Association, Software and Information Industry Association, Software Finance and Tax Executives Council, the Tax Council, the Technology Network, and the U.S. Chamber of Commerce wrote me and said that the stock options tax bill—not the Levin amendment but, rather, the tax treatment changes—that legislation would, if enacted, discourage broad-based rank and file access to stock options. It would lead to investor confusion, less accurate financial statements, and raise taxes on companies issuing stock options.

Now we have heard also some scholarly points of view. It is nice to hear what some of these esteemed individuals may say from time to time on the issue of stock options. Others in the body have quoted from Warren Buffett, a person for whom we all have a great deal of respect. But in another scholarly work from two gentlemen, economics professors at Princeton University and New York University, Dr. Malkiel, professor of economics at Princeton, and Dr. Baumol, professor of economics at New York University, say this:

> Warren Buffett and other critics suggest that the income statement should reflect an expense to the firm measured by the cash equivalent value of options. There are two problems with these views. First, if we were to consider the expense of options to be equivalent to that of cash wages, there is no way to measure that cost, the value of options at the time they are issued, with any reasonable precision. The Nobel Prize winning Black-Scholes model does an excellent job of predicting the prices at which short-term options trade in the market, but the Black-Scholes formula does not provide reliable estimates for longer term options such as those lasting 6 months to one year, and market prices often differ substantially from predicted values. Because employee stock options have durations of 5 to 10 years, are complicated by not investing immediately, are contingent on continuing employment and subject to various restrictions, it is virtually impossible to put a precise esti-

mate on the options value. Moreover, employees' options cannot be sold, violating one of the key Black-Scholes assumptions.

They conclude by saying that by targeting all stock options rather than stock option abuses, politicians are risking destruction of equity compensation instruments that have been engines of innovation and entrepreneurship.

Finally, an observation today from the Software Finance and Tax Executives Council. They call themselves by the acronym SoFTEC.

> SoFTEC believes that Senator Levin's amendment essentially dictates a pre-determined result without requiring the FASB to analyze other relevant issues surrounding stock options. Rather than mandate FASB to achieve a predetermined result, SoFTEC believes that the SEC currently has the ability and authority to properly study all of the issues surrounding stock options and make recommendations based upon not only the technical accounting issue but the public policy implications as well.

So I will conclude my time by requesting of my colleagues, whether we vote on it today, this afternoon, this evening, or in the future, that we act responsibly. It is fine to be worrying about the details of procedure and accounting minutia, but it is important also to understand the impact of this on our free enterprise system. While we are doing a lot of good as far as greater scrutiny, greater transparency, and greater punishment for wrongdoers are concerned, let us make sure we do no harm because the way that this stock market is going to change is with more investment, more risk taking, more jobs being created, and that entrepreneurial spirit that rewards people who take risks, who are creative, who are innovative. That is what is going to improve our economy, our competitiveness as a country, as well as the stock market eventually.

The point is we do not need to come up with new, convoluted ways to increase taxes on companies that we want to invest in and improve our country, and I hope we will support the free enterprise system and, in doing so, look at reasonable, logical, wise, and fully comprehended decision-making as we move forward in these very uncharted waters of making major changes in stock options.

The bill as it stands now is an outstanding bill. There can be improvements made to it, such as the amendments of Senator Grassley and Senator Dorgan, but let us not have the perfect be the enemy of the very good, and let us make sure we do no harm. By fouling up stock options for many men and women working in this country, it would certainly do a great deal of harm.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. I think the Senator from Delaware was first to seek recognition.

Mr. BIDEN. Mr. President, I say to my friend from Iowa if he has a time constraint, I will yield to him. Just so he knows, I was in the Chamber before he came. I took a phone call and came back. But if the Senator has a time constraint, I have 10 to 12 minutes, but I will be happy to yield.

Mr. GRASSLEY. If I only have to listen to a 10- or 12-minute speech, I will be glad to wait.

Mr. BIDEN. I hope the Senator listens very closely. He may learn something. I know I learn when I listen, and I do not always listen enough.

Mr. President, let me begin where the Senator from Virginia ended, and that is that I think the bill fashioned by Senator Sarbanes and this committee does exactly what the Senator from Virginia was suggesting. That would be balanced; we do not do more harm than good.

If you look at other times—and I have been a Senator for a while—we faced crises such as this, we have had occasion to overreact. We have found sometimes that the cure is worse than the disease. I note we probably did that in my early days here with Senate campaign financing and other issues.

There is a real balance that the Senator from Maryland has struck. I compliment the Senator. I cannot think of any Senator better positioned to be chief spokesman for the Senate and Congress on this issue, not only for the American people but all our allies and the investors worldwide.

The dollar now has weakened drastically. In my capacity as chairman of the Foreign Affairs Committee, I have had occasion to meet with leading government officials from European countries and from Asia, asking me, as if I were some kind of broker: Can we continue to invest in your market? Is it real? What is going on? How much more is coming?

We are fortunate to have the steady and always cautious voice of the Senator from Maryland, whose background academically as well as politically suits him well, and in this moment, as probably no one else in this place is better prepared, to take on this issue. I compliment the Senator and his quiet, reasoned voice, and his profound understanding of the problem we face as well as his determination to move ahead and try to restore confidence. It is a welcome circumstance at the moment. I compliment the Senator.

I realize from listening to him and knowing him as well as I do, as a point of personal privilege, some will discount my remarks because they know the Senator and I are close personal friends and I admire him as much as anyone I have served in all my years in the Senate. I understand there are other things that he may or may not have wanted to put in the bill to strengthen our position and the Nation's position and the economy, but he wants to make sure there is consensus and overwhelming support of whatever we do. This is not a circumstance of questioning motives and wondering whether it is more for show than for serious reconstruction of the circumstances.

I say at the outset, I have one disagreement with the President of the United States. Although there probably, pray God, are only a "few really bad apples"—I think that was his phrase—in the corporate world, I do think we have a systemic problem. The marvel is that there are so many men and women in corporate America who have high moral standards and have overcome a fairly overwhelming temptation that exists in the way business is being done, the way in which we have loosened some of the not regulations, loosened some of the oversight on corporate America. It is a testament to the fact that there are so many honorable people running America's major corporations and multinational corporations.

The fact is, we have a systemic problem which leads me to my friend from Michigan, Senator Levin. Senator Levin, Senator McCain, Senator Corzine, Senator Edwards, myself, and several

others, in varying degrees, think what this debate is all about is fundamental fairness and efficiency of our economy. A lot of what we read about these days is focused on corporate scandals, individual villains, their schemes, their greed. There is plenty of that and maybe more than I can remember any time in my Senate career.

I believe we need to focus on the behavior of corporate executives who have betrayed their positions of power, recklessly endangering the careers of tens of thousands of employees and the savings of millions of Americans. That is why it was so important the Senate unanimously adopted my amendment last week and the amendment which was contained in that of the Senator from Vermont for stronger penalties for corporate crime.

In the hearings I have held in my criminal law subcommittee in the Judiciary Committee, I made clear from the outset—and I try never to overpromise what criminal law can do, even though we are only now finally beginning to rectify and make our criminal justice system reflect our values more clearly—that is not a solution. It is a part of a solution. The Senator from Iowa and I conducted hearings in that subcommittee. We have asked for stronger penalties. We have passed them. One small example: If you were to violate the Federal law relating to pension security, ERISA, it is a misdemeanor that could cost someone their entire pension or 1,000 people their pensions, totaling hundreds of millions of dollars. It is a misdemeanor. All you get is up to 1 year in jail. Yet if you steal my automobile—I live 2 miles from the Pennsylvania State line, in Delaware—and you drive across the State line into Pennsylvania, you get 10 years under Federal law. Something is awry.

Criminal penalties are not the answer. They are just rectifying this incredible inequity within our system. Hopefully we are beginning to reestablish some sense of faith in the system where average people think big guys get away with it and little guys go to jail.

Punishing and deterring corporate crime, although it is a major part of our response to excesses committed by some of the most privileged and powerful corporate executives, is not enough. We face another fundamental problem. It is the loss of trust in our system, most apparent, perhaps, in the recent drop in the stock market. More than 200 off the DOW in the days following the President's speech, and when I came to the floor the DOW was down 300 points. I don't know where it is right now. I hope and pray to God it has moved up.

The fact is, there is a profound lack of confidence at the moment in our economy. There used to be a chairman of the board of the Dupont Company, a big, old farm boy from Ohio. He had great big hands. I remember, he was a wonderful guy, a first-rate chemist, first-rate scientist, as well as corporate executive. I was meeting with him one day and said: We have a problem; we are in the hole. And he turned and looked at me and said: My father always said, Joe, when you get in the hole, stop digging.

Maybe the President should stop making speeches for a couple of days. He has spoken twice and the market went down 500 points while he was speaking. It is not because of a lack of anything in the President, but people are looking for real change. They assume

that if there is any rhetoric, it must not be likely to be followed by something real.

The Senator from Maryland has done something real. What the Senator from Utah and his committee has done is real. This is real. This underlying bill is real; it is positive; it is substantial. The bottom line is, no pun intended, there is a profound lack of confidence at the moment and that our economy can be shaken right now to the very foundations of our market democracy. For a market democracy to work, we have to have faith in our economy that will continue to create opportunities for job advancement and that our Government will continue to promote, as our Constitution requires, the general welfare.

In recent months, to be reminded how much we have in common, how much of our unique blessings we have come to take for granted prior to September 11, we were reminded that in the end we are all in this thing together. Among those blessings we had come to take for granted was the most dynamic economy in the world, that had just come off the longest, strongest expansion in history. In the new economic arena, we are now reminded how much we depend on trust in each other to make our markets work.

That sounds silly. No one was using the word trust before when we talked of the market economy. We talked innovation, the new economy, productivity, et cetera, but when you cut it all aside, it is all based upon trust, which is based upon transparency. If you cannot get out there and make your judgment to invest or not invest in a corporation with a clear sense that you have been told everything that is reasonable to tell you about the state of affairs of that company, then you might as well play the lottery.

You might as well come on over to Delaware and play the slot machines at Delaware Park. You have about the same shot, unless you are on the inside.

The task we are debating today is how to restore the strength of our economy, which is to restore the trust. At the core of that task is revival of confidence that consumers and investors, including foreign investors, need to get back into the market.

This is going to turn around, Mr. President. You and I both know it. I am absolutely sure it is going to turn around. The question is, how many bodies will be littered along the way; how many pensions will be lost; how many jobs will be lost; how long is it going to take? It will turn around.

I am sure the greatest strength of our system continues to be its resiliency: Our ability to see change as opportunity. I am sure of that because we have met this kind of adversity before. Every time we have come out stronger.

I remember when the Senator from Maryland and I were on the Banking Committee in those dark days of the savings and loan crisis. We made it through. We made some very difficult decisions that, I might add, Japan and other countries have not made, and it resulted in an even stronger economy. So I am confident we can come out of this stronger.

After the glare from all the glitter during the boom phase and as our vision becomes a lot clearer, we know that our economy is, in fact, fundamentally stronger than it was, notwithstanding what is going on now. Productivity gains were real. Information tech-

nology and corporate reorganization created real growth. It was not imaginary. It was not like these profit margins that people were suggesting they had on the balance sheets that were a lie. There actually was growth.

The economy, the marketplace has created real growth. In what economists like to call the real economy where jobs are created, where goods are produced, the real economy is faster and more efficient today than it was a decade ago. Even old industries in our manufacturing sector have gained from advances in new materials, as well as improvement in information sharing and organization.

We also know that a lot of what looked like growth, particularly in the financial sector, was only paper profits and a lot of it was written in disappearing ink. Profits and paper valuations were all too often inflated by wishful thinking, by self-dealing analysts, by accounting gimmicks, and by outright fraud.

The amendment I am proud to support offered by Senators Levin and Corzine and others addresses one of the most glaring problems behind those inflated profit statements that fueled the stock boom that is now unwinding.

Stock options are, as advocates tell us, a useful device. They can reward employees when companies are so young that they have little else to offer. Of course, we all want to encourage startup companies in every responsible way we can. Also, stock options in theory, and sometimes in practice, keep employees' and corporate officers' incentives tied to the growth of their companies, but unlike virtually every other kind of compensation the firm can give its employees, stock options do not have to be listed on annual reports as an expense, and that means the more stock options you give, the less compensation you have to report, the lower your reported expenses, the higher your reported bottom line.

That part is simple, and that is a big reason stock options became so attractive not only for the good things they can do, but also for the convenient way they inflated earnings statements and I would even say, if I want to go overboard and defend corporate America, even defending those corporate executives who when they take the train up to Wall Street and have some 30-year-old or 35-year-old guy sitting around a table saying: OK, what are you going to do next quarter? And giant companies that are strong and mature would say: We are going to do as well as last quarter. That is not good enough. We are going to downgrade your stock and your company.

I remember one CEO of a major Fortune 10 company telling me, I have to do one of three things: I have to say, so be it, and keep on the long-term course or go out there and find some new product on the shelf, which I wish I had, that could increase productivity and profit, or go home and do something. The "do something" usually meant go home and cut the number of employees you have, cut expenses.

Guess what. I do not think these are bad, evil, and venal people. They went home, and there is an easy way to do it. Let's make sure compensation is not reflected as an expense. So instead of paying the top executives an additional $15 million in compensation, give them stock options. Guess what. The bottom line looked $15 million better than it did before.

That is not rocket science, and it may have been produced by Wall Street's desire for immediate gratification, immediate response. Whatever the reason, it turned out to be as much of a liability in the literal sense, as much as a damaging impact as the good things it could do by tying the employees' fate as well as the CEO's fate to their company.

I see my friend from Utah standing. Does he want to ask me a question?

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. BIDEN. I will be happy to yield.

Mr. BENNETT. Mr. President, the Senator is going into territory I will deal with in my statement, but to keep it all in context as he is talking, I must raise this question. The Senator is one of the historians of the Senate. He has been around a good long time and probably will be around for longer than I will.

Does the Senator from Delaware remember that in 1993 when we increased taxes in the Clinton tax increase, we also put a limit of $1 million on the total amount of deductions a company could take for salary for its employees?

In other words, that CEO could not be paid over $1 million for his or her services and have the company deduct that as a legitimate expense for tax purposes.

Mr. BIDEN. To be honest with the Senator, I do not remember that.

Mr. BENNETT. Will the Senator agree that might have been part of the reason why companies, in an effort to attract and hold the best executive talent, would have moved away from traditional compensation, that the Senator and I both understood when we were growing up and applying for jobs, and into the more esoteric area of stock options because stock options were, in fact, not deductible; whereas, good old-fashioned pay for services rendered was given a tax disadvantage as a result of the Clinton tax bill?

Mr. BIDEN. In response to the Senator, I have to check more closely. I have great respect for my friend from Utah. Based on what he says, it seems to me it would have had a negative impact rather than a positive impact. That is one of the things we talk about at the front end.

Whatever we do here should have a positive impact. There is something else stock options do, too. Because stock options are predominantly awarded to top executives, they are a great way to give yourself a sweetheart deal, with a powerful incentive for executives to look for ways to inflate stock prices so their stock options, at least for a while, are worth millions, even hundreds of millions of dollars.

Here is what Business Week said about stock options back in March:

> Options grants that promised to turn caretaker corporate managers into multimillionaires in just a few years encourage some to ignore the basics in favor of pumping up stock prices.

And pump they did. Here is how much stock options distorted the bottom line for some of the biggest and best companies in America. One study by a London-based consulting firm, Smither

and Company, looked at the use of stock options by 145 of the largest U.S. companies.

They found that those firms overstated profit by 30 percent in 1995, 36 percent in 1996, 56 percent in 1997, and 50 percent in 1998.

Other analysts, including the Federal Reserve, have found the same thing.

These are huge distortions in the picture the public was given about these companies and a huge distortion in information investors were using to allocate capital. That kind of distortion was clearly a big factor, maybe in addition to what my friend from Utah says, in driving up those stock prices that are now falling back to Earth.

This is no simple problem. The 200 biggest firms now allocate more than 16 percent of their stock in options. Let me repeat that.

The 200 biggest firms now allocate more than 16 percent of their stock in options, mostly for their very top executives.

The potential for distortion and the temptation to distort is great.

Remember these stock options are predominantly given to top executives.

One study in 1998 found that 220 of the top managers at Fortune 500 firms received an average of 279 times the number of stock options awarded to each of the firms' other employees.

Two hundred and seventy-nine times what ordinary employees got.

Despite the increased use of stock options this is clearly a device top management has largely preserved for itself, and the kind of incentives they created are now all too clear.

This amendment takes what I believe is the most restrained and most careful approach to the problem of stock options.

It does not legislate accounting standards, and it does not dictate outcomes.

It tells the Financial Accounting Standards Board that it is given new resources and new independence by the underlying Sarbanes amendment. It provides for FASB to come up with appropriate techniques to account for stock options, it does not dictate a one-size-fits-all at this moment, and it gives them a year to do it.

This is not about Government intervention this is about getting us out of the way of what every expert from Alan Greenspan to Warren Buffett and FASB itself says should be done.

It does nothing to interfere with the issuing of stock options.

It is about giving shareholders and investors the information they need to reassert their control over America's corporations. That will help to promote companies' long-term value, and reduce the temptation to pump up short-term stock prices.

This amendment can help promote a stronger form of stockholder democracy, to cure a system that a greedy few have turned to their own personal advantage. That kind of democracy needs openness and clarity—honest information to make informed decisions.

This amendment is real reform, and I urge my colleagues to support it.

I thank my friend from Utah for his intervention, and I thank my friend from Iowa for listening.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield to the Senator from Virginia, just to make a unanimous consent request.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Virginia.

Mr. ALLEN. Mr. President, I yield the remainder of my hour to Senator Gramm, the Senator from Texas, who is the Republican manager of this bill.

The PRESIDING OFFICER. The Senator has that right. Time is yielded. The Senator from Iowa.

Mr. GRASSLEY. Before I forget, Mr. President, I make the request that the unused portion of my hour that I will not be using here, I would like to also have given to the Senator from Texas.

The PRESIDING OFFICER. The Senator has that right.

Mr. GRASSLEY. Mr. President, I have five amendments I filed: (i) An amendment providing for a team of oversight auditors, (ii) an amendment providing for prebankruptcy bonuses paid to top executives be pulled back into the bankrupt corporation's estate, (iii) an amendment providing the Securities Exchange Commission with disgorgement remedies, (iv) an amendment providing that auditors who sell tax shelter products cannot opine on the financial effects of the tax shelter deal; and, (v) last, an amendment providing whistleblower protection to the accountants and others who want to disclose financial statement misconduct.

I am pleased, in regard to the last amendment I just announced about whistleblowers, Senators Leahy and Hatch accepted that proposal as part of their amendment which has been adopted.

I am not going to speak about the other four. I am just going to speak about one of those. It is the first amendment I put on my list, an amendment providing for a team of oversight auditors.

As I said, I congratulate my colleagues, Senators Sarbanes and Enzi on their hard work in moving S. 2673 out of Committee and bringing the bill to the floor for further debate. The reform bill is a great step in the right direction for tackling some of the difficult accounting problems our Nation currently faces. Nevertheless, I believe the reform bill isn't quite tough enough on several issues and should be strengthened further, consequently, the amendment.

In my view, the recent rash of accounting scandals did not result from incompetency or lack of rigorous training of accounting professionals. Neither has the problem lied principally with misguided auditing standards known as GAAS or ill-considered accounting rules known as GAAP.

The Worldcom debacle, among others, further demonstrated that the problem does not rest entirely with a company's external auditors—whose best efforts may not detect financial misrepresentations if fraud is repeatedly covered up by corporate insiders or contrived to defeat established internal controls. Instead, each of the most recent corporate accounting scandals appear to have arisen from egregiously bad behavior of corporate insiders and internal accountants—with varying degrees of complicity by those companies' external auditors.

Thus, as a matter of principle, I agree with the "bad apples" theory being offered by many. However, I believe addressing those bad

apples requires additional oversight—and not just of a company's external accountants but of the internal accounting function itself.

To that end, I further respond to the President's call for increased oversight and would like to offer an amendment that would strengthen the provisions Sarbanes-Enzi bill by expanding the powers of the oversight board to require the performance of "spot audits." The underlying bill which focuses on monitoring external auditors woud be amended to provide additional board oversight of internal corporate accounting.

Specfically, my amendment would charge the Board with responisibility for conducting oversight audits or "spot audits" of public companies. The board would serve in a role analogous to the Internal Revenue Service or the Federal Bank Examiner. The IRS, for example, achieves voluntary public compliance through review of a very limited number of Federal tax returns each year. The IRS does not verify each and every tax return. Similarly, the Federal Bank Examiner sporadically and randomly audits various banks throughout the country. Such "spot auditing" has been an extremely effective oversight tool for the banking industry and one which has resulted in higher levels of regulatory compliance. In similar fashion, I believe that accountants and corporate America will prepare more carefully their financial statements if exposed to the risk of compliance review by the board's oversight auditors.

Even in self-regulated form, the accounting industry has long recognized the need for a second level of review. To that end, 24 years ago the ACIPA established the peer review process by which one accounting firm would review audit work of another accounting firm. For example, Deloitte & Touche was for many years the assigned peer reviewer of Arthur Andersen. Industry-wide self-checking on top of industry self-regulation seems ill-conceived and has been widely critized for its effectiveness by lawmakers and the SEC.

Over the past 25 years, a Big Five accounting firm has never issued a qualified report against another Big Five accounting firm at the end of any peer review despite the subsequent discovery of numerous irregularities including numerous conflicts of interest from stock ownership in audit clients. This recognized need for a second level of review is longstanding although the mechanism originally established by the accounting industry seems to have proven largely inadequate.

Some may ask why the Board should be granted powers which may be exercised currently by the SEC. The answer is simply resources. Providing an effective mechanism for spot checking the books of various issuers requires a dedicated audit staff to carry out those purposes. Having resources dedicated to a regulatory review process would allow the oversight board to take a proactive approach in reviewing for accounting irregularities and take the SEC out of a purely reactive posture with respect to corporate accounting fraud. The SEC has done a great job of investigating corporate scandals once detected. Unfortunately, by the time many of the recent scandals were discovered, things had progressed too far. We were unable to salvage the companies and the life savings of thousands of employees and shareholders. I believe the oversight auditor would provide a deterrent to committing fraud when cou-

pled with tougher criminal sanctions. I further believe that earlier detection could prevent the absolute destruction of companies in which fraud remains uncovered for too long a period of time.

I note that the concept of an oversight auditor within the public oversight board was rejected in the accounting reform proposal offered by the SEC and Harvey Pitt on June 20. The draft emphasized that the SEC's vision of a newly created public oversight board reassured corporate America that the newly-created oversight board would require the cooperation of audited corporations "only to the extent necessary to further . . . reviews or proceedings regarding the [audit corporation's] accountant." The draft further promised that the new oversight board would not conduct "roving investigations" of audited corporations nor would the board sanction those corporations. It occurs to me that by shifting exclusive focus and responsibility to accounting firms, we ignore the underlying behavior of corporate wrongdoers who have principal responsibility for fair and accurate financial reporting to corporate shareholders.

Under my proposal, the newly created oversight board would be charged with reviewing the financial statements of issuers and focusing its resources on highest-risk audit areas and questionable accounting practices of which it is aware from the SEC Division of Enforcement or other sources such as whistleblowers under provisions I heartily supported.

Upon discovery, the board would refer findings of possible accounting or auditing irregularity to the Division of Enforcement with respect to issuers or other appropriate Federal and State enforcement officials such as the President's newly-created Fraud Task Force within the Department of Justice. This referral mechanism would ensure that those agencies continue to have primary authority and responsibility for conducting comprehensive corporate investigations of possible wrongdoing. The oversight board, of course, would have authority to conduct investigations of possible wrongdoing with respect to the involvement of accounting firms within its jurisdiction.

That is a basic summary of what this amendment would accomplish. I urge my colleagues to support establishment of an oversight auditor as a means of improving the compliance of corporate issuers and their external accounting firms and detecting irregularities at a much earlier point in the system when a shareholder value remains salvageable.

It seems to me that my amendment comes down to just a simple case of common sense. As I think proven so many times before, auditors need to be audited in the same way the IRS does it for tax returns and in the same way bank examiners do it in the case of bank audits. If auditors know their work will itself be audited, they will think twice about looking the other way on shady deals, as we have seen.

My amendment would put some very specific teeth in the Sarbanes-Enzi bill.

At this point, I was hoping the Senator from Texas was going to be here because I have done so much for him on a lot of Finance Committee bills. I'm referring to tax bills, including the recent CARE bill and the recent energy bill. I have helped him with so

many amendments that he wanted. I was sure he would be willing to help me get unanimous consent to get my amendment up, particularly in light of the fact that last week I was assured when it wasn't on the list that it would be on the list. Then I came back and found that it meant being last on the list.

Now we are getting down to the end. I would like to have what I consider kind of a commitment, although it probably is not an ironclad commitment, that I be on the list, and, obviously, I would be able to get a vote on my amendment.

At this point, I ask unanimous consent that the pending amendment be laid aside for the purpose of taking up my amendment just described, which is amendment No. 4232.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. In light of the discussions, I have to object.

Mr. GRASSLEY. Was the President going to put my unanimous consent before the Senate?

The PRESIDING OFFICER. I did.

Mr. GRASSLEY. I did not hear the President do that.

The PRESIDING OFFICER. The Senator from Wyoming objects.

Mr. GRASSLEY. Mr. President, before I yield the floor, I would like to have just a short discussion of something that bothers me. In the Senate we have a right to be, and a responsibility to be, intellectually honest about these issues with which we are faced here.

I have heard so much during this debate—not so much during the debate, because that wouldn't be fair, but more probably in news conferences held by Senators on the other side of the aisle—about the Democrats wishing to use Enron and WorldCom events very much as, I think, political issues. I think maybe the Democrats are hoping for a "November storm" in which our economy is weak and no progress is made on accounting reforms.

As this bill goes through the Senate, through conference, and comes back, I hope we will realize that there is enough blame to go around. But, most importantly, I think it is wrong. For instance, the distinguished majority leader on "Face the Nation" recently attributed the current crisis to the alleged "permissive" attitude in the Bush administration towards business. I didn't see any "permissiveness" in the President's speech last week. I don't think very many people did.

But I think we also need to remember, while a lot of this mischief was going on by corporations, that during the decades of the 1990s and now in the 21st century there were 2 years in which Democrats controlled Congress. In those two years, we had a Republican President. That was the first Bush Presidency. There was a period of time when the Democrats controlled both Houses of Congress and the White House. That was 1993-1994. Then there were 6 years that Republicans controlled the Congress—1994-2000, and the Democrats controlled the Presidency. Then there were 135 days last year that Congress was controlled by Republicans, and the President of the United States, but only 135 days out of a 12-year period of time, if you want to use the 1990s plus now. And what has happened has happened on the watch of both Republicans and Democrats.

I think that to say a President has been President 18 months and this crisis before us is because of a "permissive" attitude in the Bush administration towards business just doesn't hold water.

I have a chart behind me. I hope I am very clear in making this more accurate than what I just said. The yellow is the 2 years of the Bush administration going back to 1994, and the other color covers the Clinton administration. But let's forget about the Bush administration and the Clinton administration. Let's just realize what the facts are.

In the case of Enron, it became public in the year 2001, but the restated earnings and the mischief went on all the way back to at least the beginning of 1997 because 1997, 1998, 1999, 2000, and the first two quarters of 2001 were restated earnings.

Adelphia: Half of 1998, all of 1999, all of 2000—before they were public in 2001—but restated earnings for all those.

Go down to Xerox. It was found by the end of the year 2000 everything that was done wrong in Xerox. The restated earnings of 1997, 1998, 1999, and 2000 came before there was ever a President George Bush.

There were restated earnings for Rite Aid for 1998, 1999, and 2000. You can go down the list. What the chart says, better than I can say, is that it is not a permissive attitude by this President that has put us in this position. It is because of the lack of transparency that was implied in what the accounting profession and audit committees and boards of directors, who ought to be watching management, were doing, and the Securities Exchange Commission under the spirit of the 1933 law of what they should have been doing. I suppose there are a lot of others as well.

But now politics should be put to the side. We should not be making these statements. We ought to be correcting the situation so that people have confidence and so that the crooks who are running our corporations and doing these things that are evidenced here. When I say "crooks running our corporations," I mean the ones who would do this sort of thing to their stockholders and to the country and to the economy—so that they cannot get away with that in the future.

That is what this bill is all about. I complimented Senator Sarbanes and Senator Enzi about this bill. I think it would have been improved with my amendment. But, quite obviously, that is not the way the game is being played. So I am sorry that my amendment could not be put to a vote.

The PRESIDING Officer. The Senator from Utah.

Mr. BENNETT. Mr. President, I have spent most of the afternoon in the Chamber listening to this debate, which I have found to be illuminating, occasionally informative. I want to do what I can to perhaps add to the information, if not to some of the light.

I made reference, in my colloquy with the Senator from Delaware, to the decision that was made by the Congress back in 1993 to put a limit on the amount of compensation that executives could receive in terms of traditional dollar salary. And the limit was $1 million.

I remember some of the rhetoric that flew around this floor at that time, filled this Chamber—how terrible it was that people were being paid these outlandish salaries and that somehow it

would benefit the people at the bottom of our economic ladder if there was a limit placed on those salaries. And so recognizing that they could not outlaw the salaries, Congress could do the next best thing—or, if I might say, the next worst thing—and say: All right, they can pay themselves these big salaries, but, by George, we will not allow a tax deduction for anything over $1 million.

Then, recognizing that would probably produce all kinds of difficulty, Congress said: Except in a number of areas. And one of the areas of exceptions was that nonsalary compensation could exceed $1 million and be expensed if it were approved by the shareholders.

In my view, this was a strong incentive to move towards stock options. After all, if you are running a public company and your services are worth $5 million or $10 million on the open market, you are not going to stay with a company that will only pay you $1 million in cash if a competing company will come along and offer you the $5 million or $10 million you think you are worth in the form of other compensation.

So as we get lyrical around here about how terrible stock options are, and how stock options lead to all kinds of excess, we should remember that Congress, in its excess of enthusiasm for a form of wage and price controls, helped contribute to this situation.

We do not like to have institutional memory. We do not like to be held accountable for our actions 4 or 5 years after those actions are taken. But, in this case, I think it is appropriate for us to remember the past while we are getting so exercised about what it is we plan to do in the future.

If I might, Mr. President, be a little autobiographical for a moment, I would like to trace my own experience with stock options. I have reflected on this, and I think it has perhaps some value in this debate.

I was working for the JC Penney Company in the mid-1960s. I was interested, when I went to work for the Penney Company, to find out that company had a tremendously innovative and singular form of compensation; that is, no one in the company was paid more than $25,000 a year—no one. The president, the chairman of the board, none of the vice presidents—no one was paid more than $25,000 a year.

There was a pool of profits that was created, and in addition to your $25,000 salary, you were given points in the pool. It was assumed that the pool was divided up in such a way that any one point in the pool was worth $1. So when I went to work for the Penney Company in 1964, my salary was, as I recall, $10,000 a year. I was not important enough to get to the exalted $25,000 a year stage. But I was given 2,500 points in the pool, which meant that if the company met its earnings objectives, I would get another $2,500; in other words, my real salary would be $12,500.

So I did everything I could to make sure that every point in the pool was, in fact, worth $1. I did what I could to turn off the lights. I did what I could to save expenses. I did what I could to drive sales so that the company would meet its goal.

My memory is that in one of those years each point was worth 93 cents; that is, the company fell 7 percent short of its projection. And every one of us in the company who was having that kind of a salary circumstance felt that 7 percent hit. In the example I have

just given, instead of getting another $2,500 at the end of the year, I would have that $2,500 shaved by 7 percent. I would get my $10,000 salary, plus 93 percent of the additional $2,500.

There were stories in the Penney Company that were legendary about managers who would get transferred from one Penney store to another. At the time, as I recall, the limit was not $25,000, it was $10,000. So $10,000 per year was the maximum anyone in the company was paid. A store manager who was transferred from a relatively small store to a relatively large one in a large city was sure he was going to get a big raise. He got his first check, and it was for $10,000 a year. And he said: But my expenses are higher. I am running a store that is two or three times bigger. It doesn't matter; you get $10,000 a year. At the end of the year, when they added up the profits of that store, he got a bonus based on the profits of the store he was managing, and the bonus was about $100,000. Well, he had an obvious incentive to see to it that store was profitable.

What does any of this have to do with stock options? That system that was followed by the Penney Company that helped drive its growth all those years—where compensation was tied to performance, not only your personal performance as in the case of the store manager I described but in the company's performance, as in my own case—that program was scrapped. We went to a more traditional kind of compensation. As part of the traditional kind of compensation, we had stock options.

I got a little comfortable with the old system because I remember 1 year where each point in the pool was worth $1.23. The company did much better than it had anticipated, and I got a 23 percent upward kick in my compensation.

I questioned: Why are we getting away from this because it seems to me this works?

The answer was: Wall Street requires it.

Well, that wasn't enough of an answer for me. I said: What do you mean Wall Street requires it?

They said: The analysts at Wall Street have said to us, until you give stock options, we are not going to believe that you are serious about the future of your company because stock options are not tied to immediate profits. Stock options are tied to future profits. And until you put some of your compensation to your executives and key employees in the form of stock options, we will not believe that you believe the future of your company is as bright as you say it is. We want them to have a stake in the future.

So as it was explained to me, in the scrapping of this unique compensation plan that I think the JC Penney Company was the only company in the country, if not the world, that followed it, in the scrapping of that plan, you had to adopt some form of stock options. So they did adopt stock options.

I didn't stay around long enough to take advantage of them. I entered the Nixon administration in 1969 and gave up my vesting in a number of circumstances at the Penney Company. Frankly, I was a little nervous about that because I thought I had a bright future financially if I had stayed at the Penney Company. And again, as I say, at the end of the year, when they sent me the money that had been accumulating in my behalf during the part of the year I

worked there, each point was worth $1.23. That said to me, once again, how much more money I would have had if I had stayed with Penney instead of coming with the Government. That is a separate issue. I will not go down that road any further. I am glad I made the decision I made. I probably would not be a Senator if I had not.

The point is, the compensation of employees should be tied to the future and benefit and prosperity of the company, and stock options were created with that in mind. What we have seen them become, since 1993, when they were not available as part of an intelligent compensation mix, but they were made more valuable by tax treatment by the Congress making an accounting decision, what we have seen is that stock options have accumulated the bad name we have been hearing about here on the floor. I am not sure I agree with everything that has been said about how terrible stock options are, but I do recognize they have led to some excesses.

In the New York Times, on July 12, there was an editorial signed by Walter Cadette, senior scholar at the Levy Institute of Bard College and retired vice president of J.P. Morgan. With a background at J.P. Morgan, in my view, he has a little bit more credibility than some of the people who write editorials for the New York Times. But he made the same point that has been going around the floor here in some of the rhetoric when he says:

> Options . . . hold out the promise of wealth beyond imaging. All it takes is a set of books good enough to send a stock price soaring, if only for a while. If real earnings are not there, they can be manufactured—for long enough, in any case, for executives to cash out. This, in essence, is what happened at Enron, WorldCom, Xerox—indeed, at quite a long list of companies.

That is not congruent with the explanation about stock options I received back in the 1960s, when I had my first opportunity to participate in stock options in a Fortune 500 company. That is something that is new, that has come along.

So we are back to the fundamental question of this bill, which is, How do we account for the performance of a company in a way that will allow investors to make an intelligent judgment about the value of the company?

That is the fundamental issue here. It is fundamental enough that I think I ought to repeat it: How do we account for the performance of the company in an accurate enough manner to allow investors to make an intelligent decision about the future of that company?

Some will say to us: That is a very easy question to answer. Congressman Gephardt has been quoted in the press as suggesting that accounting is a science. It is a simple matter of black and white, of adding 1 and 1 and getting 2.

That is not the case, however much we would like to believe that is the case. Yes, when you are talking about some aspects of accounting for a company's performance, it is a simple matter of adding up the numbers and reporting them. But in a company as complex as today's modern industrial corporation, there are a whole series of judgment calls that must be made. It is not just a matter of adding up all of the sales. It is not just a matter of adding up all of the costs.

Back to my example of the JC Penney Company, this is a matter of a judgment call being made. What is the judgment of the value of this company if it does not trust its executives enough with stock options?

Analysts on Wall Street who are trained and experienced came to one judgment call: that the Penney Company was not worth as much without stock options as it would be with them—nothing whatever to do with the bottom line, nothing whatever to do with how many socks we sold or how many shoes we sold or how many shirts we sold. It was a judgment call on the value of the company based on accounting decisions.

Are we going to account for compensation strictly on the basis of the Penney Company's system or are we going to make a judgment call based on stock options?

Well, the Penney Company did what it believed it had to do under those circumstances and, of course, went forward in its history.

The point here is that there are judgment calls to be made every day in every circumstance with respect to accounting, and they will determine how the public, the investing public, will respond to the company that makes them.

That raises the question of what should those calls be and who should determine what those calls should be.

There is a term we use. It is called GAAP. It stands for generally accepted accounting principles. The very phrase itself defines what it is we are talking about. If we want to make an accounting decision as to what something is worth, we should make the decision within the parameters of GAAP; that is, we should make the decision on the basis that is generally accepted.

Let me give an example of what happens when you go outside the basis of what is generally accepted accounting principles. I was involved with an investor and he put out appropriate balance sheets, accounting information, profit and loss statements, and so on. He got a very angry call from one of the subinvestors. This was the kind of man who would sell shares in his overall project primarily to doctors and dentists.

He said to me once:

> I will not sell shares to lawyers.

I said:

> Why not? Isn't a lawyer's money just as good as a doctor's or a dentist's money?

He said:

> No, because lawyers are trained to find problems and I don't want sub-investors who spend all of their time looking for problems.

Well, he got a phone call from a physician who said to him:

> I have looked at your financial information and you are lying to me.

He said:

> What do you mean I am lying to you?

He said:

> It is right here in your documents. You said this particular venture made X hundreds of thousands of dollars last year. Now you have given me your financial statements and I have found out you didn't make a penny.

The man said:

> What are you talking about?

He said:

> I have it right here. Here is a list of your assets and a list of your liabilities and they match each other to the exact cent. You didn't make any money.

Well, generally accepted accounting principles say that a balance sheet always has to balance, that the number on one side and the number on the other side must equal each other to the penny. This man did not understand generally accepted accounting procedures, he wanted to keep books a different kind of way, and he was misled. The solution, of course, was to educate him on what those generally accepted accounting procedures ought to be. Once he generally accepted what those procedures were, he could read the profit and loss statement, the balance sheet, and he could discover that the man, in fact, was not lying to him and that, in fact, the venture had made several hundreds of thousands of dollars that year.

Now, let's come to Wall Street, let's come to Enron, let's come to all of the things that we are talking about here. One of the things we have heard in many of the hearings that I have attended on this subject is that if you were a sophisticated analyst of financial statements, you could, in fact, find all of the information that you needed in the footnotes of the various financial statements that were published. You did not need the kinds of disclosure that this bill is calling for.

Well, I examined that, listened to that testimony, listened to the people who made that point, and came to the conclusion that they are right. If you are sophisticated enough to be able to go through every single footnote, examine every single side comment, and plow through all of the boilerplate that makes up a standard financial release, you could create an accurate picture of that corporation—except in those cases where there was outright fraud. In my opinion, Enron was a case of outright fraud, not a case of hiding things in footnotes; it was a case of lying.

Quite frankly, there is nothing we can do in this Chamber, or anywhere else in a legislative forum, to stop people who determine that they are going to lie, who are determined they are going to commit fraud. That will happen no matter what kind of a bill we pass. We can raise the penalty and thereby discourage it a little more—and there are proposals to do that—but we cannot stop it. If someone is determined he is going to break the law, and he thinks he can lie and get away with it, he will still do it regardless of the bills that we pass here.

But what we can do, what we should do, and what this bill is crafted to do is to make it easier for the ordinary investor to understand what a company is worth, make it so that the generally accepted accounting principles conform with generally understood activities with respect to the business world.

The question is, how can we establish accounting rules that will make it possible for the ordinary investor to understand what is going on and not restrict understanding to those who can read the footnotes, who can decipher all of the boilerplate. I don't think we will ever get there in a perfect world. Life being what it is, with the lawyers coming in and requiring careful terms of art to be

spelled out, we will never get to the point where someone who does not have any kind of legal understanding of the terms of art can read this as easily as he or she could read Harry Potter. However, we can move in that direction, and I feel this bill does so move.

The one thing that we should be most careful of, however, is to avoid having Congress set the accounting rules. Why? If Congress sets the accounting rules, it will—to use a phrase we use here derisively sometimes—take an act of Congress to turn that around. And having set the rules, Congress is very reluctant to come back in an act of Congress and change them. But if the rules are set by the regulatory bodies over which Congress exerts some oversight responsibility, they can be changed much more easily as more information comes along and as people begin to discover that what they did previously maybe doesn't make as much sense.

I offer as exhibit A Congress's action to outlaw the deductibility of cash compensation above a million dollars—something that, in retrospect, now looks like it was a pretty stupid thing for us to have done. But we have done it, and the chances of trying to get a bill through that would undo it are very slim. If we stay out of the business—we in Congress—of making these kinds of accounting decisions, we will be better off, the economy will be better off, more people will keep their jobs, et cetera.

Let me close on that particular subject with that particular idea in mind, and that is that Congress from time to time wants to step into the marketplace, repeal the law of supply and demand, and assert our judgment over the judgment of the marketplace. I have said many times, and will say many times hence, if I could add to what we have carved in marble around here, I would say: "You cannot repeal the law of supply and demand." But we keep trying to do it with wage and price controls. We keep trying to repeal the law of supply and demand.

We tried to do it in 1993 when we said we will do something about the excessive compensation of executives. We won't say that the marketplace and the law of supply and demand will determine what people get paid; we will legislate it. We will legislate it with tax policy. We will do some social engineering through tax policy. We keep trying to do that all the time, and it almost always produces a perverse effect.

Let me address this question of overwhelmingly big salaries and compensation—as if there was something really evil about that, really corrupting about that. Maybe there is, in terms of the impact that that sort of compensation has in the lives of an individual, but it is the marketplace at work.

Let me give an example with which I think everybody might be familiar. I am not talking about Jack Welch, the CEO of GE. I am not talking about Ken Lay at Enron. Let's talk about somebody with whom most people can identify. Let's talk about Wayne Gretzky.

Wayne Gretzky has been called, accurately in my view, the greatest hockey player who ever lived. Along with that, Wayne Gretzky is the highest paid hockey player who ever lived. At the time the decision was made by the hockey team that brought Wayne Gretzky into the United States and paid him an incredible sum of money, there was a great hue and cry: How can one individual be

worth this much money? For what? Knocking a solid piece of whatever hockey pucks are made out of around on the ice, for that he is worth $20 million, $30 million, $50 million—whatever it was—a year?

The owner of the team came out of some obscurity long enough to say: Yes, he is worth that much money, and let me explain to you why. Then he outlined what the ticket sales for his team were the year before he hired Wayne Gretzky and what the ticket sales for his team were the year he announced the hiring of Wayne Gretzky. The number was several times the total amount that Wayne Gretzky was being paid.

The owner said: On a percentage basis, he is a bargain. He is a steal at the price I got him.

These numbers are representative rather than absolute, but they stick in my memory that they were paying Gretzky something like $40 million or $50 million and the increase in ticket sales was going to be something like $120 million to $150 million.

The owner said: If I had to, I would pay him twice as much because I am getting the benefit.

People say: But that is measurable. Michael Jordan did the same thing for the Washington Wizards. We can figure that out with accounting. But what these chief executive officers are being paid is obscene.

If you are a shareholder of General Electric, Mr. President, and you looked at what Jack Welch, the CEO of General Electric, did with that company during the time he had it in his stewardship, would you look back on that total period and say we paid Jack Welch too much money? Or would you look back on the amount of the value of General Electric that was generated under his stewardship and say he was a bargain; he was a steal; we could have paid him twice what we paid him and still come out well ahead?

You say: But look at all of the executives who flew their companies right into the sea. Look at the executives who destroyed their firms. Yet they got this same amount of money.

If I may go back again to the sports world, have we not seen sports teams pay very large salaries, responding to the law of supply and demand, for coaches who had losing seasons? For quarterbacks who ended up being on the waiver list? Those of us in the Washington, DC, area have had a lot of experience with quarterbacks. Does that mean we are going to stop trying to get the right quarterback for the Washington Redskins by saying we will pay them average salaries in the National Football League so that there will not be any more of these obscene salaries and failures?

Several things will happen if the Washington Redskins take that point of view. No. 1, they will start to lose even more than they have lost in the past. And, No. 2, the fans will stop coming and the savings that you will make in buying a quarterback that you can get for $400,000 or $500,000 a year, compared to the one that you are gambling $10 million or $20 million on will all disappear as the ticket sales fall off, the television revenue disappears, and people do not want to come anymore.

Yes, there have been corporate executives who have been vastly overpaid. There have been CEOs who have been hired on the basis of their reputation, just as football coaches who have been hired on

the basis of their reputation, who, to lure them into the company, have been given great packages and then failed to deliver. But there are also the Jack Welches of this world who have turned out to be bargains no matter how much they were paid.

Who should make the decision as to how much they should be paid? The answer is, The marketplace should do it. The law of supply and demand should do it. Someone who has demonstrated that he or she has the capacity to build, maintain, and expand a corporation with tremendous value for the shareholders is someone who can demand very high salaries because he or she is in very short supply.

We can complain all we want to about the social inequity of a CEO who is earning $20 million, $30 million, $40 million a year and someone who is working in that company for minimum wage, but it is the same principle as saying: Look at the difference between Wayne Gretzky down on the ice earning $20 million, $30 million, $40 million a year and someone selling hot dogs in the stands. If Wayne Gretzky were not on the ice, there would not be anybody in the stands to buy the hot dogs. Wayne Gretzky and his skills are in much shorter supply than someone who can stand in the stands and sell hot dogs.

We should not in our frenzy in this whole debate get so carried away with our desire to deal with those who have damaged the system by their failure to live up to their responsibilities that we, once again, make any statements that would cause us to try to repeal the law of supply and demand.

I see my colleagues are seeking recognition. I have carried on long enough. I leave with this one last thought: If we are going to deal with these issues, we should deal with them in the way this bill deals with them and not in the proposal that Congress itself should set accounting standards or should set wages or caps or compensation.

Past history tells us Congress can act in a hurry but repent at great leisure.

Mr. GRAMM. We have a unanimous consent request and a request for the yeas and nays that I want to make while we have at least a handful of Members here. I ask for the yeas and nays on the Edwards amendment.

The PRESIDING OFFICER. It is not in order to request the yeas and nays.

Mr. GRAMM. I ask unanimous consent that it be in order to request the yeas and nays on both pending amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is in order to seek the yeas and nays at this point.

Mr. GRAMM. I ask for the yeas and nays on the pending Edwards amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. I now ask for the yeas and nays on the Carnahan amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. The Democrat floor leader had a unanimous consent request he wants to propound.

Mr. REID. Mr. President, we are in the process of working that out now. I think we will be able to do that later.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business, with the time consumed counting against the postcloture debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Mr. President, it is also my understanding that the Senator from Nevada is going to yield an hour to the manager of the bill; is that right?

Mr. ENSIGN. If you require the 50 minutes that will be left against.

Mr. REID. Or whatever time is left.

Mr. ENSIGN. Yes.

Mr. REID. Mr. President, I understand he has a right to do that; is that true?

The PRESIDING OFFICER. The Senator has a right to yield time. The manager of the bill may receive up to 44 additional minutes. The Senator from Nevada.

Mr. ENSIGN. Mr. President, at the end of my remarks, I will yield whatever time the Senator from Texas can receive.

Mr. President, I want to talk about something a little different than what we have been talking about today, although I have very strong feelings about the bill and think that both the managers of the bill, along with Senator Enzi from Wyoming, have done a terrific job in addressing some very serious problems out there. I still believe there are a few problems with the bill we need to clean up in conference.

I do think the overall legislation has some positive reforms that must be implemented to try to restore some confidence back in the investing public.

PRESCRIPTION DRUGS

Mr. ENSIGN. Mr. President, what I want to talk about is something we are going to be dealing with later this week—as early as tomorrow from what I understand—and that is the whole idea of prescription drugs within Medicare. Earlier today, Senators Hagel, Gramm, Lugar, Inhofe, and I all introduced a new prescription drug bill. It is the compilation of work mainly that Senator Hagel and I have been doing for the last couple of years. We think it is a proposal that deserves the attention of our colleagues, and I encourage them to study this proposal.

I want to start by reading an e-mail I received from a senior citizen back in Nevada. This e-mail came in at 11:21 p.m. Pacific standard time, so obviously this person was up late at night thinking about the whole issue of prescription drugs. Let me read it:

I urge you to ponder very honestly the proposed prescription coverage with Medicare. Many social problems arise due to the fact that many persons who need medication to maintain some sort of

life existence are not able to purchase the needed medications. Must we continue to choose housing or our medications? Please step back and consider if an elderly or disabled person in your own family were in this precarious situation. Would you not step up to the moral plate and fight to find funding for Medicare covered prescriptions?

I think this person summed up very well what a lot of seniors are feeling: They are having to choose sometimes between the type of food they eat and prescription drugs; sometimes between whether they can turn their air-conditioner on in the summertime or their heat on in the wintertime and prescription drugs; sometimes between rent and prescription drugs.

There are several proposals, and I commend the people who have been working on their proposals, but, frankly, the reason we decided to introduce this bill is that some of the other bills, especially when one looks into the outyears, are so costly that they literally could bankrupt the Medicare system in and of itself.

Our bill does a few things. First, it is available to every beneficiary, and it is also available faster than any of the other prescription drug proposals. Our bill can be implemented as early as January 1, 2004, whereas the earliest the other proposals can be implemented is 1 full year later.

Our bill is also the most affordable bill, especially to the taxpayer. We are waiting for the final score from CBO, but we think it is going to come in somewhere around $150 billion over the next 10 years. The next cheapest proposal, that we are aware of, is around $370 billion, and when one looks at the full cost of a 10 year program, other programs can be up to a trillion dollars.

A trillion dollars is not something this country can afford, especially under current economic conditions, and especially when we think about young people who would like to see Medicare as a benefit to them someday.

So we must enact a reform that not only America can afford but also senior citizens can afford, and we think we have come up with that balance. Basically, the way the program would work is, every senior on a voluntary basis would be able to get a prescription drug discount card. For a $25 annual fee, they would sign up and get this prescription drug discount card. They would then go buy their prescription drugs, and all seniors would save because of volume discount buying. We would use the private sector to do this. They would save, on average, 25 to 40 percent on their drugs. That is a huge savings right upfront that every senior could achieve.

On top of that savings, seniors up to 200 percent of poverty would next spend, on average, about $100 a month out-of-pocket; then after that, other than a very small copay, the Federal Government would cover the rest of their prescription drug costs.

This is what seniors are looking for. In my campaign in the year 2000, I took this plan all over the State of Nevada and talked to low-income, moderate-income, and higher income seniors groups about it. I told them that people who are in the lower income bracket are going to get most of the benefit, and for people in the higher income bracket, it is going to cost them more money, as it should.

In some of the other programs, no matter whether one is a lower income or higher income senior, they basically are treated the same. I personally do not think Ross Perot or somebody in his income category should be treated the same as somebody who makes $15,000 a year. There should be some difference. Under our bill, there is a great difference in the way those two categories of people would be treated.

The reason our bill is less costly to the taxpayer is one simple fact: All the other bills give a percentage of first dollar coverage. Whether it is 50 percent or whatever the coverage, after a very small deductible, they all start covering right away. Our bill says the senior is going to pay about the first $100 a month out of pocket, and then after that, our coverage kicks in.

About 50 percent of the seniors do not have $1,200 worth of prescription drug costs per year, so about half the seniors, other than the discounts they will get because of the prescription drug discount card, actually will not use it. But, frankly, most seniors can afford about $100 a month for prescription drugs. It is for that diabetic patient or that heart patient or that cancer patient who has maybe about $500, or $300, or $400, or whatever it is, a month that they are paying in current prescription drug costs. These are the people that really cannot afford their prescription drugs, and our bill helps that person much more than most of the other plans.

The reason our bill saves so much money is that we keep the patient accountable for the drugs they are getting. They do not have somebody else paying for it and as they get the benefit. That is one of the biggest problems we have with our current health care system: There is no accountability with patients. They are receiving the benefit regardless of the cost, and so they do not think about shopping because somebody else is paying the bill.

We do not have market forces working in the health care field today, and if we enact a prescription drug benefit without utilizing market forces, someday we are really going to regret it because we will have severely out of control costs.

The bill we have introduced, we believe, is more fiscally responsible and targets most of the benefit for those who truly need it the most. We can enact it a lot more quickly than some of the other programs, and it is permanent. It is because of those factors that we believe this bill is the bill that our colleagues should take a look at supporting.

We would be happy to meet with anybody to talk to them about the bill and possibly about cosponsoring the bill. Do not be turned off because one political party may be offering one bill and the other party offering another bill. We are offering an alternative to either of those bills, and we think this bill, with its fiscal responsibility to the taxpayer, is the bill that people should support.

In closing, I look forward to engaging in a meaningful debate on prescription drugs after we deal with this accounting reform issue—and this issue is so important, and I see my friend from Wyoming who has done so much work on the bill, and I applaud him and the others who have worked on this bill. But later in the week as we are debating this prescription drug benefit proposal, we need to take a serious look and not play politics because seniors cannot afford for us to play politics with the prescription drug issue. We

need to work together in a bipartisan, rather, in a nonpartisan fashion, so seniors can get the help they so deserve.

I ask unanimous consent that under the provisions of rule XXII, I may yield whatever time I can yield back to Senator Gramm. I understand it is 44 minutes, and I yield that amount of time to Senator Gramm.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator has that right.

The Senator from Georgia.

Mr. KENNEDY. Will the Senator yield?

Mr. CLELAND. I am happy to yield.

Mr. KENNEDY. We have had two speakers from the other side. I ask unanimous consent to follow the Senator from Georgia.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

Mr. ENZI. Reserving the right to object, and I will not object, some of us have been on the floor all this time waiting to speak, as well. We hope for a chance to speak before we reach the end of the day.

I will not object.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CLELAND. Madam President, I ask recognition to discuss my amendment No. 4236. This amendment addresses the accountability of corporate officers and directors. I strongly support the legislation before us which addresses the critical need to create an environment of accountability within corporate America. We need to send a strong message to corporate executives that the days of living large while lying, cheating, and stealing from the American people are over. Control of a company certainly has its advantages, but it also carries important obligations and duties. My amendment would address a situation like Enron where officers cashed in on bonuses, severance packages and millions of dollars in stock sales as they saw the light of the train coming through the tunnel. Unfortunately for thousands of Enron employees and investors, they had no similar warning and were not able to bail themselves out before many lost not just their jobs, but their life savings as well. My amendment would make sure that officers and directors who know what is happening, who know that financial reports are being manipulated, can't cash in on this knowledge while leaving employees and investors holding the bag. It is the duty of officers and directors to know what is happening in the corporation and to blow the whistle when they know there is wrongdoing.

In the case of Enron, 10 executives or directors joined CEO Ken Lay and Chief Financial Officer Andrew Fastow in siphoning off company proceeds and reaping millions of dollars when they sold their Enron shares high. Together these 12 individuals made stock profits totaling more than $30 million before the company took a public nose dive at the end of last year. These corporate high rollers were reaping huge profits at the same time thousands of hard working Americans were losing more than a billion dollars in retirement savings, including $127 million in lost retirement savings in my home State alone by teachers and State employees.

Corporate greed, should not be rewarded. The underlying bill requires that when a corporation has to file a restated financial re-

port because of misconduct in the original report, the CEO and CFO have to give back any profits they have made from bonuses and stock sales for a year after the original report. My amendment would expand on the bill by calling into account all officers and directors who know about the misconduct in filing the financial report and through that knowledge abuse the company's trust and the trust of their employees. It would also mandate that officers and directors who have knowledge of wrongdoing in their financial reports would not only have to give up bonuses and profits but also their severance packages. Why should someone like Jeff Skilling get a parachute as he bails out of a disaster he helped to create?

This amendment, my amendment, deserves support. It is endorsed by Arthur Levitt, one of this Nation's most distinguished financial authorities. It is high time we call corporate executives on the carpet and hold them accountable. It is time we create an atmosphere that encourages responsible behavior and restores the confidence of the American people in the economy of this country.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is to be recognized.

Mr. KENNEDY. I am happy to yield.

Mr. REID. I will take a couple of minutes.

Mr. KENNEDY. I guess I just yielded the floor.

I yield to the Senator and ask recognition afterwards.

Mr. REID. We have had some very long speeches by those on the other side and I thought it appropriate we respond.

The ranking member of the Finance Committee had all these charts indicating that all the problems were not the problems of this administration. The fact is, we realize there is a lot of blame to go around. With do not try to whitewash this issue.

The fact is, the President of the United States appointed the SEC Commissioner, who stated in the hearings he wanted a friendlier, a more gentle Securities and Exchange Commission.

That statement speaks for itself.

We also have to understand that actions speak louder than words. What I mean is, we have a Federal Government today, this administration, that is basically run like corporate America. That has to change. That is what this legislation is all about.

When there is a situation where the President of the United States is being written up in editorials all over the country and news articles throughout the country over his dealings with stock, borrowing money that basically he did not have, to pay back the principle until you sell your stock—no one else gets deals like that. The commentators are looking at that, as they should. Of course, the dealings that the Vice President had with Halliburton, we would like to know more about that. But the Vice President is treating that like he treated his energy task force: in complete secrecy, contrary to how we should be running this Government.

I believe we have a situation that cries out for passing this legislation as quickly as possible. This administration must step forward and recognize they are part of the problem, until they start talking about supporting this legislation, as I understand the President did today. I think that is wonderful. I understand he is going to help us get this through conference. I think that is important.

I would like to see it before the August recess. It is important this legislation move forward.

Actions speak louder than words. This administration has to do more than talk about what needs to be done. They have to work with us in solving the problems of corporate America today.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, there are many important provisions in the legislation before the Senate to increase corporate accountability. I had hoped to offer an amendment to make workers' retirement plans whole again when the corporate executives cheat.

After the collapse of Enron—the largest bankruptcy in U.S. history—the President and many Republicans in Congress suggested that it was an isolated example of corporate wrongdoing. Since that time, the Nation has witnessed a continuing series of corporate scandals which have demonstrated otherwise.

The lack of corporate responsibility in the United States has undermined the credibility of our markets and devastated the retirement savings of millions of Americans. This widespread abuse of corporate power has also jeopardized our Nation's economic recovery and hurt the legitimacy of our fundamental institutions. We must take bold action this week to ensure that corporations are made accountable and that workers and investors are protected against these abuses.

In the past month, we have seen a jury criminally convict the Arthur Andersen accounting firm for engaging in the obstruction of justice to cover up the Enron debacle. We have seen WorldCom admit that it wrongly reported its true financial condition by nearly $4 billion. Just last week, the Wall Street Journal reported that Merck recorded $12.4 billion in revenue from a subsidiary that it never actually collected.

In response to these scandals the President gave a speech last week, which the White House likened to the words of former President Teddy Roosevelt. Unlike our Nation's great trust-buster, the President failed to lay out a comprehensive plan to restore America's confidence in our economic system.

Hard-working Americans and their families have suffered immensely as a result of these scandals and the failure of the Administration to take decisive action. Workers have lost their jobs, their health benefits, and their retirement savings. Today, over 47 million workers rely on 401(k) plans and the stock market for retirement security. We can't wait for the next report of corporate fraud, the next round of layoffs, and retirement losses before we take serious action.

This wave of corporate scandals is undermining the confidence of investors in the U.S. economy. Mutual fund investors have lost about $700 billion in just the last 15 months. In May of this year, new investments in stock funds declined by nearly two-thirds from the previous month. As foreign investors lose confidence in the transparency of U.S. corporations, these investors are pulling out of the U.S. market and the value of the dollar is now falling against foreign currency. With an unemployment rate of 5.9 percent, America's workers can ill afford to have their economic prospects dimmed by corporate corruption.

Its time—in fact its long past time—to pass tough new laws to prevent future abuses of corporate power. We must reform our accounting system, enact criminal penalties for corporate wrongdoers, and pass new protections for workers.

Senator Sarbanes' accounting bill is critical to reforming our public accounting system and ensuring transparency and accountability for corporations in the United States. The legislation creates an independent oversight board; it restricts the non-audit services than an accounting firm can provide to the public companies that it audits; it holds corporate executives responsible for the accuracy of corporate financial statements; it requires corporate insiders to report stock sales and corporate loans to the SEC; and it provides additional resources to the SEC to improve its investigation and enforcement capabilities. We all owe a debt of gratitude to our colleague, Senator Paul Sarbanes, for shepherding this legislation through the Banking Committee and bringing it before the Senate.

In addition to these accounting reforms, we must hold corporate executives accountable when they mislead workers and undermine their retirement security. At Enron, executives cashed out more than a billion dollars of stock while Enron workers lost nearly a billion dollars from their 401(k) retirement plans. Thousands of Enron workers lost virtually all of their retirement savings. Enron executives got rich off stock options even as they drove the company into the ground and systematically misled workers about the true financial state of the company. Ken Lay now has a pension of nearly half a million dollars a year for life. Many Enron workers have nothing at all.

These are all statements that were made by Mr. Lay. Ken Lay's lies encouraged workers to buy Enron stock at $49. He "never felt better about the prospects of the company." He predicted to employees a "significantly higher stock price," saying it was "an incredible bargain" as it was going down. Mr. Lay has a pension of nearly half a million dollars a year. At WorldCom, the workers lost more than half of their retirement savings as the stock dropped from $60 to just 6 cents. Workers across the country also lost big as a result corporate wrongdoing at WorldCom. The brave firefighters and police officers of New York City lost $100 million from their pension fund. Over 20,000 workers have been laid off in the last few weeks because of the actions of WorldCom executives. Yet, those same executives made out like bandits. Former WorldCom CEO Bernie Ebbers is guaranteed a million and a half dollars for the rest of his life while WorldCom workers face a bleak financial future.

Sadly, Enron and WorldCom are not just isolated tales of corporate greed that hurt America's workers. At Kmart, 22,000 workers were laid off. At Lucent, 16,000 workers were laid off. At Xerox, over 13,000 workers were laid off. At Tyco, almost 10,000 workers were laid off. At Global Crossing, over 9,000 workers were laid off.

These corporate debacles reveal a much deeper crisis of corporate values. In America, people who work hard all their lives deserve retirement security in their golden years. It is wrong—dead wrong—to expect Americans to face poverty in retirement after decades of working and saving.

For far too long, corporate executives have been obsessed with their own compensation instead of the long-term health of the companies they lead. Executives, like those at Enron and Wordcom, should not put their own short-term gain ahead of the long-term interests of workers and shareholders. They must not be rewarded for doing so. At Enron, workers were systematically misled by Enron executives about the financial situation of the company. For years, Enron, like many other companies, pushed its workers to buy company stock with their own 401(k) contributions.

Until the bitter end, Enron executives continued to promote Enron stock to workers in a series of e-mails. On August 14, Enron CEO Kenneth Lay told workers that he "never felt better about the prospects for the company." On August 27, Lay predicted to workers a "significantly higher stock price." And on September 26, Lay called Enron stock "an incredible bargain." Even as they promised the moon, Lay and other executives were cashing out their stock for a billion dollars.

If Enron and WorldCom scandals teach us anything, it's that we must stop rewarding corporate misbehavior.

Our amendment—it is cosponsored by Senator Gregg of New Hampshire—makes it clear that executives who give workers misleading information about the company stock in their 401(k) plans face serious penalties. The amendment is the civil law parallel to the Leahy criminal provisions, which punish executives for defrauding investors. The amendment is also the ERISA civil law parallel to the Biden amendment, which increases the ERISA criminal penalties. When executives lie and mislead workers about company stock, they must face real penalties.

Under current pension law, Enron executives, like Ken Lay, and Arthur Anderson, cannot be held responsible for workers' losses in their 401(k) plan. The amendment makes a corporate "insider"—an officer or director or the independent public accountant—responsible under pension law if the insider misleads workers about the company's stock.

America's workers need this amendment to hold Ken Lay and other executives engaged in wrongdoing accountable. The amendment empowers workers to seek restitution when executives knowingly abuse workers' pensions. If workers lose their retirement savings due to deliberate corporate mismanagement, then they should have the right under our laws to hold those top executives accountable in a court of law, and recover what they lost. This right could make the difference for a family between an impoverished retirement and a comfortable retirement that they earned.

The economic health of our Nation depends on reigning in the abuses of corporate power which we have witnessed in recent months. Restoring the credibility of accounting standards, as the Sarbanes bill would do, is critical to restoring confidence in our markets. At the same time, we must also restore basic fairness to our system.

When corporations like Enron fail because of executive wrongdoing, corporate executives get golden parachutes but workers are left with a tin cup when it comes to their retirement. Corporate criminals must be made to pay for their misdeeds.

We see from this chart what has happened: Ken Lay, $457,000 a year for life, retirement savings were decimated, 4,200 layoffs; former WorldCom CEO, Bernard Ebbers, $1.5 million a year, retirement savings decimated, 20,000 layoffs; Richard McGinn, $12.5 million lump sum pay for Lucent, retirement savings decimated, layoffs for 16,000; Charles Conway, $9 million lump sum pension, retirement savings decimated 22,000 layoffs.

This has to stop. Today we have a critical opportunity to protect workers and investors against future abuses of corporate power. We must not let these hard-working Americans down.

Madam President, I ask unanimous consent to temporarily lay aside the pending amendment in order that I may offer the Kennedy-Gregg amendment, which I send to the desk at this time.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts retains the floor.

Mr. KENNEDY. Madam President, I have heard objection. We tried to get this amendment up during the period of the last week and were closed out. It is a simple amendment. It is an amendment that can do more to protect workers' interests than many other proposals. I think we ought to have some accountability for those who willingly mislead, willingly and knowingly mislead workers, and then benefit from insider information.

It would just give them a cause of action, a specific case, no punitive damages. It would be a factual situation which would have to be decided in the courts of law. But it does seem to me to offer a real meaningful opportunity to protect workers and the savings of workers from the kind of gross abuse we have seen currently here in the Senate.

Mr. DORGAN. Madam President, will the Senator yield for a brief question?

Mr. KENNEDY. I am glad to yield for a question.

Mr. DORGAN. Madam President, the Senator from Massachusetts has just propounded a unanimous consent request on an amendment that makes good sense to me, and it certainly should be added to this bill. I assume it is a germane amendment. We are postcloture. At the very least, he should have gotten a vote on the amendment. But I wonder if the Senator from Massachusetts knows that this has gone on all afternoon. I offered an amendment a couple of hours ago that was simple and germane. It should have had a vote. It said that if the CEOs and directors of a corporation waltz out the door with millions of dollars of bonuses, stock options, and incentive pay, and then the company goes bankrupt, they have to give it back. I couldn't get that amendment up for a vote because of the same objection.

I wonder if the Senator from Massachusetts might conclude from this that the things here in the final hour which are germane have a right to be considered and heard on behalf of the workers and the shareholders and the folks who didn't get rich but the folks who lost everything. I wonder if there is not a pattern here that the Senator from Massachusetts sees and that others see to shut down those amendments and protect the folks at the top while the folks at the bottom lost everything.

Mr. KENNEDY. Madam President, this amendment is relevant. But under the strict rules of the Senate, it would not be considered germane, although I think a commonsense evaluation or review of the amendment's purpose and what the underlying bill is about would certainly appear to I think most people to be an important strengthening provision if we are interested in corporate responsibility and protection for workers. It is certainly relevant, but under the technical rules it is not germane.

But I think anyone who knows what this bill is really all about understands what is happening in these circumstances. This would certainly be a very strengthening provision in the underlying provisions. We were unable to get the opportunity to have the consideration because we were foreclosed from that opportunity at the end of last week and we are getting objections this week.

I think that is unfortunate. As I understand it, the most current support for this is overwhelmingly among Republicans and Democrats alike across this country. They understand. It doesn't take a lot of debate or discussion to understand what accountability is all about. Under the existing laws, they can only have accountability, not for those who are at the CEO level, who are really the ones making these judgments and decisions upon which workers are relying, but they would only be able to sue lesser figures in the corporate ladder. Therefore, this is not an effective remedy for workers.

We are trying to provide an effective remedy for workers who are being shortchanged. It makes eminently good sense. It is eminently fair. It is eminently responsible. It is eminently relevant. But there has been objection to it.

I want to give assurance to the Senator that we look forward to offering this amendment at another time at the first opportunity.

Mr. REID. Madam President, I ask unanimous consent that Senator Byrd be recognized today at 5 until 15 after the hour to speak.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INSIDER TRADING

Mr. GRAMM. S. 2673 includes provisions prohibiting insider trading of company stock during so-called blackouts—or periods during which pension plan participants are unable to exercise control over the assets in their accounts. In order to implement the insider trading prohibition, it was necessary to provide a definition of a blackout period. The Banking Committee also provided a 30-day notice requirement prior to a blackout, so workers and executives alike would know when the insider trading prohibition would be effective.

Mr. GRASSLEY. Mr. President, there appears to be broad consensus that pension plan administrators should be required to provide 30 days' notice to affected plan participants before limiting

their ability to exercise the rights provided through their pension plans. These advance blackout notices will become integral requirements for how pension plans will operate in the future. Because of this, notice requirements were included both in the pension bill reported by the Health, Education, Labor, and Pensions, HELP, Committee on March 21, and in the bill reported by the Finance Committee unanimously on July 11.

Mr. GREGG. I agree with the Senator from Iowa. Although the general concepts are agreed upon, however, there are differences between these provisions in all three bills that affect the operations of pension plans, and will clearly need to be worked out before the bill is sent to the President's desk. Harmonizing these requirements will require a careful balance between the rights of pension participants and the financial burdens on plan administrators.

Mr. KENNEDY. I certainly agree with the remarks of my colleagues. My bill provides pension plan participants with written notice 30 days before a plan blackout begins, and prohibits blackouts from continuing for an unreasonable time. This important disclosure to pension plan participants is within the jurisdiction of the HELP Committee.

Mr. BAUCUS. I also agree with the remarks of my colleagues. As chairman of the Finance Committee, which also has jurisdiction over pension plans, I join the chairman of the HELP Committee and the ranking members of both the Finance and HELP Committees in urging the chairman and ranking member of the Banking Committee to work with us as you go to conference on S. 2673, to ensure that the blackout provisions are drafted in such a way as to ensure the proper operation of the pension system.

Mr. SARBANES. I look forward to consulting with both the Finance Committee and the Health, Education, Labor, and Pensions Committee as we go to conference to make sure the provisions are appropriately drafted.

CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS

Mr. GRAHAM. Section 302 of S. 2673 involves Corporate Responsibility for Financial Reports. I am concerned that in subsection (b), where the CEO and CFO sign documents to verify the accuracy of financial reports, the bill's language says they shall "certify" the accuracy of the financial documents. In my view, this language should read "certify under oath" in order to be consistent with current Securities and Exchange Commission, SEC, regulations. You can clearly see that the SEC currently requires that these statements to be under oath. Let's not create a lower standard in this bill than currently exists in regulation.

Mr. SARBANES. I appreciate the Senator's interest, and I hope his concerns can be addressed in conference.

Mr. GRAHAM. I thank the Senator for his assistance on this issue and his leadership on this legislation.

I ask unanimous consent that Exhibit A of the order be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From SEC website www.sec.gov, June 27, 2002, OMB Number: 3235-0569; Expires: January 31, 2003]

Exhibit A—Statement Under Oath of Principal Executive Officer and Principal Financial Officer Regarding Facts and Circumstances Relating to Exchange Act Filings

I, [Name of principal executive officer or principal financial officer], state and attest that:

(1) To the best of my knowledge, based upon a review of the covered reports of [company name], and, except as corrected or supplemented in a subsequent covered report: no covered report contained an untrue statement of a material fact as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed); and no covered report omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed).

(2) I [have/have not] reviewed the contents of this statement with [the Company's audit committee] [in the absence of an audit committee, the independent members of the Company's board of directors].

(3) In this statement under oath, each of the following, if filed on or before the date of this statement, is a "covered report":

[identify most recent Annual Report on Form 10-K filed with the Commission] of [company name];

all reports on Form 10-Q, all reports on Form 8-K and all definitive proxy materials of [company name] filed with the Commission subsequent to the filing of the Form 10-K identified above; and

any amendments to any of the foregoing.

GUIDANCE TO STATE REGULATORY AUTHORITIES

Mr. ENSIGN. Mr. President, the purpose of this amendment is to ensure that State regulators do not automatically apply the provisions of this bill to accounting firms, particularly small accounting firms and firms that service small businesses without first looking at the possible harmful unintended consequences to those small businesses. The standards applied by the board under this act could create undue burdens and cost if applied to nonpublic accounting companies and other accounting firms that provide services to small business clients.

Mr. GRAMM. I agree with my friend, the Senator from Nevada, and want to add that what we need to avoid is a possible cascading effect, starting with the Federal Government, that could eventually hurt the small accounting businesses in this country.

Mr. ENSIGN. Many of these small businesses rely on their CPA or auditor to provide objective, trusted advice and counsel on a broad range of tax and business related issues. Without this amendment, we will end up harming thousands of American accounting firms and their small business clients.

Mr. GRAMM. Mr. President, I think the Senator from Nevada is right about the harmful affects this legislation could have on small businesses, not only the small accounting firms in this country, but also the small business clients of those companies. This amendment says to the State regulators to look very carefully at the effects this legislation could have for smaller and medium-sized firms, and also on small businesses that may rely on larger firms for their audit work.

Mr. ENSIGN. I thank the Senator from Texas for his comments.

Mr. KOHL. Mr. President, as a businessman, I have been deeply concerned about the reports of fraudulent and even criminal behavior at prominent American corporations. When I worked in business on a daily basis, this is not the kind of behavior I saw or expected from my peers. It is imperative that we respond to the cor-

porate malfeasance which has been roiling our markets. The impact of these acts, all for the sake of boosting short-term profits, has been broad, costing many their jobs and others their savings.

The free market is the underpinning of our economic system, the key to the growth and development of our Nation in the last two centuries. The many creative and dynamic businesses which make up our democratic capitalism make important contributions in the form of good paying jobs and the taxes which pay for critical services, such as our National defense. Above all, these businesses are good citizens in their communities. As a result, businessmen are important and highly valued people in our society. The vast majority of businessmen act in good faith and with integrity. It is the bad apples who give the rest a bad name.

Our system has been abused. Unfortunately, those who have raped the system have reaped financial gain, while the rest have lost jobs, savings and pensions. They and their boards violated the public trust.

Those who are lucky enough to be in positions of leadership have an enormous responsibility to enhance and not damage our economy. Unfortunately, the current system of regulation has not been sufficient to prevent bad actors from abusing their positions. That is why we are taking action today. We must build more accountability into our economy because the bad actors—even if they are not in great numbers—have impacted our whole economy. The stock market is no longer the playground of the rich: We are now in an era when as many as 50 percent of the American people have some of their assets in the stock market, meaning enormous repercussions if companies are misrepresenting their financial positions.

I agree with the President that ethical behavior and corporate responsibility are essential if we are to restore the confidence of the American people in our free markets. However, the colossal corporate wrongdoing we have seen uncovered—in 2001 alone, 270 public companies had to restate the numbers in their financial statements—requires that we step up to the plate and address some of the structural problems which have allowed these frauds to occur.

That is why I support S. 2673, the Public Accounting and Corporate Reform Investor Protection Act of 2002.

There are those who have said this legislation is too strong. I disagree. This legislation will not have a negative impact on people doing their jobs as they should. We have an obligation to protect investors, employees, citizens. We are saying to CEOs, their fellow executives, and their boards: We expect you to do your jobs correctly, with integrity, and if you don't, you will be held accountable.

It is not enough to challenge corporate America to do better. We must make clear that there is a cost to engaging in accounting and securities fraud. That is why I supported the Leahy amendment, a version of the Corporate and Criminal Fraud Accountability Act. This amendment strengthens existing criminal penalties for corporate crime, creates a securities fraud felony punishable by up to 10 years in prison, and creates a new crime for schemes to defraud shareholders. The amendment also would establish a new felony antishredding provision and would protect corporate whistleblowers.

The strength of the Sarbanes bill is not in the penalties alone. The bill addresses conflicts of interest which have permitted these crimes to occur and is a balanced approach which will help prevent corporate fraud from occurring in the first place.

The bill sets up a strong, independent, and full-time oversight board with broad authorities to regulate auditors of public companies, set auditing standards, and investigate violations of accounting practices. The Public Accounting Oversight Board proposed in the bill is a better alternative to the part-time board currently being pushed by the SEC. That board would leave standard setting to the accounting profession and would most likely perpetuate the status quo. It is the lack of clear standards coming from the current system of self-regulation which has been the root of many of the frauds being revealed today.

The Sarbanes bill also restricts the nonaudit services a public accounting firm may provide to its clients that are public companies. These consulting services are clear conflicts of interest for independent auditors. We cannot rely on auditors to serve as the watchdogs of publicly traded companies if they are deeply invested in these same companies. If we cannot rely on the auditors, than how are we to rely on the markets?

Finally, the Sarbanes bill addresses the problem of stock analyst conflicts of interest. The Merrill Lynch case recently settled in New York is an egregious example of stock analysts pushing stocks that they actually thought had little value. Most often the motive for pushing stocks of questionable value is to boost their own investment banking departments which are underwriting these stocks. The bill before us today addresses this problem and requires the SEC to adopt rules designed to protect the independence and integrity of securities analysts.

I have no illusions that one bill will be the panacea for all that currently ails corporate America. For example, I believe there is more we should do, beyond the corporate disclosures in this bill, to address problems with corporate boards. We have a responsibility, however, to restore confidence in our markets and in the solid businesses which make up these markets so that our economy can thrive. Only decisive action can prevent this fraud on the American people from happening again.

Mrs. MURRAY. Mr. President, over the past year as Americans have worked hard to restart our economy, we have been hit by report after report of irregularities, misconduct, and blatant conflicts of interest by corporate executives, auditors, and brokerage firms.

The current corporate and auditing scandals are hurting American families. Thousands of jobs and retirement accounts have disappeared. Millions of current investors have watched their gains evaporate. Our economic recovery looks more distant. And most importantly for our long-term prosperity, investors are no longer confident that the financial information provided by public companies and their auditors is accurate.

Congress cannot restore the jobs and retirement savings caused by this wave of corporate and auditing scandals. It can act to strengthen oversight of the accounting industry, to demand greater responsibility from corporate executives, and to address conflicts of interest in brokerage firms.

Today I am voting for reform. We need to send a strong message to working and retired Americans, to investors, and to the executives and auditors of publicly held companies that this Senate will act to restore accountability and faith in our free market system. The Senate's bipartisan accounting reform bill will do just that.

First, the bill limits its scope to publicly held companies. The bill does not attempt to Federalize accounting oversight. Instead, it strengthens the Federal Government's historic role of regulating publicly traded companies and their auditors. The State boards of accountancy will continue their important role of regulating accountants who audit private companies.

Second, the legislation establishes a strong, independent Public Company Accounting Oversight Board. The board is empowered to set auditing, quality control, and ethics standards, to inspect registered accounting firms, to conduct investigations, and to take disciplinary actions. As a check on the board's power, its decisions are subject to oversight and review by the Securities and Exchange Commission, SEC.

Third, this bill seeks to ensure that auditors are fulfilling their public duties by ending potential conflicts of interest. Large accounting firms typically provide both audit and nonaudit services to their public company clients. The legislation would prohibit auditors from performing specific nonauditing services, unless those services are approved on a case-by-case basis by the Public Company Accounting Oversight Board. All legal nonaudit services would need to be approved by a public company's audit committee.

Fourth, the Senate legislation demands that corporate leaders take greater responsibility. The bill requires that chief executive officers, CEOs, and chief financial officers, CFOs, certify financial reports, outlaws fraud and deception by managers in the auditing process, prevents CEOs and CFOs from benefitting from misstatements made in their financial reports, and prohibits corporate decisionmakers from selling company stock at a time when their employees are prohibited from doing so.

Fifth, the Senate bill would limit the growing pressure and conflicts of interest that affect the independence of stock analysts. Just as investors need to know that a company's financial reports are accurate, so should investors expect objective opinions from stock analysts.

Finally, the bill would authorize additional funding for the SEC and would establish independent sources of funding for the new oversight board and FASB. As a member of the Senate Appropriations Committee, I will support full funding for the SEC.

We need to work to prevent future scandals. We also need stronger criminal laws and penalties to address fraud and abuse by corporate executives and auditors. During last week's debate I voted for three amendments, including an amendment by Senator Leahy, that would close gaps in current law.

I know some of my constituents in the accounting and business communities are concerned by a few of the steps in the Senate bill. As I talk to certified public accountants in my State, they have emphasized that it is critical to encourage greater competition in the public accounting field. I agree investors would be better served by more competition. The bill requires the Comptroller General, in

consultation with various agencies and organizations, to identify the factors that have led to the consolidation of public accounting firms since 1989, the impact of consolidation, and ways to address it. While a study does not guarantee action, I look forward to reviewing its findings.

It is time to restore confidence in corporate financial statements. It is time to hold people accountable who violate the public trust. I urge my colleagues to join me in supporting this legislation.

Mrs. BOXER. Individual investors, saving for their retirement or their children's education, count on business leaders to play by the rules. They also count on financial industry professionals including accountants and research analysis to produce reliable, professional, and honest work.

But recent business scandals at Enron, Tyco, Merrill Lynch, WorldCom and others are proving that without strong government oversight and regulation, greed will lead executives, accountants, and investment analysts to abuse the trust that American workers and investors have placed in them.

We have to restore that trust. This bill is a good first step. It has the necessary teeth to clamp down on corporate irresponsibility. First, it creates a full-time independent board to set ethical auditing standards. Second, it prevents companies from providing most consulting services for the very same companies that they audit. Third, if enforced, it would send corporate executives who mislead shareholders to jail. Fourth, it forces Wall Street investment research analysts to disclose any conflicts of interest that they or their financial institution might have in the investment recommendations that they make. And finally, it protects whistleblowers who reveal unethical acts by the companies for which they work.

I support this bill and would have supported even stronger legislation. I remain concerned that the public members on the board created in this bill are not chosen according to specific independence standards. I am also concerned that disclosure requirements do not include the holdings of family members of influential research analysts on Wall Street. And most importantly I had hoped we could do more to get funds to workers who lose their jobs as a result of executive misconduct. Those concerns aside, this bill is a good first step in restoring confidence in the system.

Unfortunately, the House recently passed a bill that is weak and will not get the job done. It fails to establish a full-time board to design and enforce auditing standards, does not mandate jail time for securities fraud, and fails to protect whistleblowers. On the conflicts of interests that investment analysts are forced to disclose in the Senate bill, the House bill calls only for a study of the issue.

I urge the President to go beyond rhetoric and endorse the Senate accounting reform bill so that we can get a strong bill out of conference. I also urge the President to join us in fighting for meaningful pension reform to ensure that American's retirement savings are protected.

Mr. SMITH of Oregon. Mr. President, I rise today to take a few moments to praise the Banking Committee for bringing the Public Company Accounting Reform and Investor Protection Act of 2002 to the floor and all the hard work they have done in the past week.

In the weeks before this bill came to the floor I thought that what we needed was some type of Investors' Bill of Rights.

I had worked with colleagues on both sides of the aisle to come up with bipartisan goals to prevent corporate abuse and protect investors. I feel that much of the bill on the floor fulfills these goals. I feel that there are a few things that investors should see happen when we pass this bill. I believe that much of this bill will help, and in other areas we may have to work further.

I believe that investors must have access to information about a company. We should ensure that every investor has access to clear and understandable information needed to judge a firm's financial performance, condition and risks. The SEC will have the power to make sure companies provide investors a true and fair picture of themselves. A company should disclose information in its control that a reasonable investor would find necessary to assess the company's value, without compromising competitive assets.

I believe that investors should be able to trust the auditors. Investors rely on strong, fair and transparent auditory procedures and the concept of the Oversight Board in the Sarbanes bill is a sound one.

I believe investors should be able to trust corporate CEOs. Unlike shareholders or even directors, corporate officers work full-time to promote and protect the well-being of the firm. A CEO bears responsibility for informing the firm's shareholders of its financial health. I support the concept of withholding CEO bonuses and other incentive-based forms of compensation in cases of illegal and unethical accounting. Further, I do believe that CEOs must vouch for the veracity of public disclosures including financial statements.

I believe that investors should be able to trust stock analysts. Investors should be able to trust that recommendations made by analysts are not biased by promises of profit dependent on ratings. It is only common sense that there should be rules of conduct for stock analysts and that there must be disclosure requirements that might illuminate conflicts of interest.

Finally, I believe that we should be able to rely on the Securities and Exchange Commission to protect investors and maintain the integrity of the securities market. Current funding is inadequate and should be increased to allow for greater oversight, ensuring investors' trust in good government.

During the debate on this bill my attention has been called to the plight of public pension systems, such as Oregon's Public Employment Retirement System, known by the acronym PERS. PERS you see was invested in both Enron and WorldCom stock and has been hit hard by the debacles that occurred in each company. The PERS system lost about $46 million after Enron self-destructed and another $63 million following the WorldCom scandal.

These losses occurred because false profits were inflated and corporate books were doctored. Under the PERS system, an 8 percent rate of return is guaranteed for the 290,000 Oregon active and retired members of PERS. Oregon taxpayers have to make up the difference following an ENRON debacle or WorldCom scandal, and my State's budget is not prepared for this kind of loss.

While this bill goes far in creating accountability, I am interested in finding out if there is more we can do and am asking the Gen-

eral Accounting Office, in consultation with the Securities and Exchange Commission and the Department of Labor, to report to Congress on the extent to which Federal securities laws have led to declines in the value of stock in publicly traded companies and in public and private pension plans.

I believe this study is necessary because many public and private pension plans continue to rely on the continued stock growth in publicly traded companies, much like the PERS system. I hope this study will provide the needed information so public and private pension plans can reevaluate future investments in publicly traded companies.

We cannot stand by and watch our hard working Americans ruin their pension systems while corrupt corporate executives take advantage of investors. I am proud of the work the Senate has done in the last week in creating accountability and responsibility in corporate America and look forward to working on this issue in a way that will help the investors and pensioners in the PERS system in Oregon.

Mr. AKAKA. Mr. President, I rise today to express my support for the Public Company Accounting Reform and Investor Protection Act of 2002. I thank Chairman Sarbanes for his leadership and the Banking Committee's staff for their efforts which have resulted in a measure which is fair, realistic, and protects investors. The steady disclosure of accounting scandals and corporate misdeeds underscores the need for legislation to protect investors and to restore public trust in the accounting industry and financial markets. Chairman Sarbanes has been the leading voice for reform. Our Banking Committee held ten hearings on accounting and investor protection issues in February and March. These hearings produced extremely valuable information from which S. 2673 was developed.

Public confidence has been shaken by the incidences of fraud and misrepresentations revealed in the financial statements of companies. Enron, Xerox, and WorldCom are just a few examples of corporations which have misled investors with their financial statements. Since 1997, there have been almost 1,000 restatements of earnings by companies. Investors have suffered substantial financial losses and are unsure of the validity of the audits of public companies. There is a lingering fear that there will be additional revelations of corporate fraud or misrepresentation. This has already harmed investor confidence and could continue to have an adverse impact on the financial markets.

I support this bill because it takes the appropriate steps to help restore public trust in the accounting industry and financial markets. S. 2673 would create an independent Public Accounting Oversight Board to provide effective oversight over those in the accounting industry responsible for auditing public companies. Previous attempts at regulation have been complex and ineffective. As the numerous auditing failures demonstrate, there is a need for an independent Board with authority to adopt and enforce auditing, quality control, ethics, and independence standards for auditors.

The legislation also requires additional corporate governance procedures to make Chief Executive Officers and Chief Financial Officers more directly responsible for the quality of financial reporting made to investors. After the numerous misstatements and cor-

porate abuses that have occurred, this is a necessary step to ensure that corporate executives are held accountable for the financial statements of their companies. A particularly important provision in the bill would require that CEOs and CFOs forfeit bonuses, incentive-based compensation, and profits from stock sales if accounting restatements result from material noncompliance with SEC financial reporting requirements.

Rules to limit and disclose conflicts of interests for stock analysts are included in the legislation. There is a concern that firms pressure their analysts to provide favorable reports on current or potential investment banking clients. This provision would provide protection to those individual investors who often depend on analysts for making investment decisions without being aware of the potential conflicts of interest that the analysts may have with companies whose stock they evaluate.

The Public Company Accounting Reform and Investor Protection Act also authorizes additional appropriations for the Securities and Exchange Commission in order to provide the resources necessary to protect investors. According to the General Accounting Office, approximately 250 positions were vacant last year because the Commission was unable to attract qualified candidates. Additional funding is needed to attract and retain qualified employees. S. 2673 would authorize appropriations of $776 million for the Commission, which is much greater than President Bush's original budget request of $467 million. I am pleased that the President is moving closer to supporting the dollar amount included in the bill.

I also want to thank Chairman Sarbanes for including an amendment in the bill which I have worked closely with the Committee staff in developing. The amendment would require the General Accounting Office, GAO, to conduct a study of the factors that have led to consolidation in the accounting industry and the impact that this has had on the securities markets. Since 1989, the Big 8 accounting firms have narrowed down to the Big 5 and may soon become the Final 4. This study is necessary to evaluate the impact that consolidation has had on quality of audit services, audit costs, auditor independence, or other problems for businesses. In addition, the study is necessary to determine what can be done to increase competition among accounting firms and whether Federal or State regulations impede competition.

I am pleased that the Senate has worked in a strong bipartisan fashion to strengthen this bill. Extremely valuable amendments have been added to the original committee bill. In particular, the Leahy and Biden amendments strengthen penalties for corporate fraud. These two amendments will help provide much needed additional protection for investors and retirement plan participants.

I encourage my colleagues to support the Public Accounting Reform and Investor Protection Act of 2002 to restore public trust in the accounting industry and the financial markets.

Mrs. FEINSTEIN. Mr. President, I rise to offer my support and cosponsor an amendment to S. 2673 offered by the senior Senator from New York, which would prohibit all loans by a corporation to its directors or executive officers.

Among the abuses committed by senior executives and directors at companies such as WorldCom, Enron, and Global Crossing is the

practice of issuing large, favorable loans to those executives and directors.

Those loans can create conflicts of interest that limit that the ability of outside directors, in particular, to voice their criticism of the institution.

Many years ago, I served on the board of directors of a bank, and noted that at the time, several of the directors had hundreds of thousands of dollars worth of outstanding loans at that bank.

At the time, this occurred to me to be wrong, and I could not understand why these directors did not take out loans at another bank, thereby avoiding any conflicts of interest.

The only conclusion I could draw was that the loans to these directors were either easier to procure or made on more favorable terms than loans from another bank would be.

I see no justification for providing loans to corporate directors or executive officers. The goal of the reforms that we are currently debating should be to create an environment in which outside directors and major corporate officers act in as pure and honest a manner as possible.

They should not enter into any appearance of conflict, such as the conflict that occurs when the corporation that they serve extends them a personal loan.

When an individual investor chooses to buy a stock, he or she does so with the full knowledge that it might turn out to be a bad investment. The stock may appreciate in value, but it might also go sour.

Anyone who makes that investment knows that the only way to be sure not to lose any money is to keep the money in cash or buy a T-bill.

But that is not the way it worked for the CEOs and directors of some of the largest public companies in this country.

For example, Bernard Ebbers, the former CEO of WorldCom, took out $430 million in loans from his company between September 2000 and the end of 2001.

When the SEC began investigating WorldCom earlier this year, $343 million in loans were still outstanding, most of which may never be recovered by WorldCom's investors.

Those loans to Ebbers are far from unique in corporate America today. One of the most egregious examples of this type of abuse recent months is the disclosure of $3.1 billion in loans extended to family members and affiliated business interests of the Rigas family by Adelphia Communications, a publicly traded company controlled by the Rigas family.

These loans were never disclosed to shareholders, and were apparently used to shore up a wide variety of business deals involving Rigas family members, including a golf course and an infusion of cash into the Buffalo Sabres hockey team.

On July 9, President Bush went to Wall Street and called for, among other things, "an end to all company loans to corporate officers."

I believe that the President was right, and have cosponsored this amendment with that goal in mind.

Investors have a right to know exactly how much of their dividends are going to pay for excessive pay packages. They also have

a right to expect that the board of directors is truly independent and that no directors are tied too closely to the corporation they serve because of loans they have received from it.

Ms. SNOWE. Mr. President, I rise today to speak in support of the legislation we are considering, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

Last fall, we watched as a company once in the top 10 of the Fortune 500 imploded from the weight of its own complex efforts to mask debt and hide losses. We watched as the company stock-laden retirement plans of Enron's loyal employees dwindled by $1 billion. Meanwhile, company executives cashed out their own shares while these employees were barred from doing so. And finally, in Congressional hearings, we watched and listened as former Enron executives either chose to remain silent, or pointed fingers of blame at everyone's actions except their own.

Tragically, the bankruptcy of Enron was no anomaly in the business sector. Rather, it was only the beginning. It ultimately proved to be a watershed event, as several other companies have reevaluated their own business and accounting methods, and found significant indiscretions. Global Crossing, a telecommunications company, is being investigated by the SEC and FBI in regard to questionable accounting practices used to artificially inflate revenue. Adelphia Communications, a cable company, is now in bankruptcy proceedings due to investigations by the SEC and two Federal grand juries for off-balance sheet loans to the company's founders.

More recently, Xerox announced that it would restate 5 years of results which could affect the true nature of what had been reported as $6 billion in revenues. And on June 25, WorldCom announced that it had misrepresented $3.8 billion in expenses over five quarters, therefore allowing the company to report financial gain, when in reality, the company was experiencing a net loss.

While the downward spiral of each of these companies was unique, common threads are woven through each of their failures. First, the insistence by executives that, above all else, stock price remain high was an integral part of the creation of the financial woes of each company; in essence, this short-term focus compromised the long-term viability of these entities.

What has also been disturbing as these revelations have come to light is the role played by the so-called independent auditors of the companies under investigation. While the accountants are not the sole perpetrators of the financial deception that has occurred, the apparent lack of scrutiny of the financial statements of the aforementioned companies has created an inherent mistrust in the accuracy and integrity of the true nature of corporate earnings.

Furthermore, the practice of allowing auditing companies to perform non-audit services can have the ultimate effect of allowing such companies to audit the work of their own personnel. This practice defeats the purpose of having an unbiased entity objectively reviewing the merits and accuracy of financial statements.

The legislation we are considering in the Senate includes crucial provisions that will play a pivotal role in restoring confidence in our market system, and enhancing the public and private sector controls that are in place to monitor the relevant entities. The legislation creates a Public Accounting Oversight Board, which will be

an entity solely focused on companies that audit and account for publicly traded firms. This oversight authority will include the ability to investigate and punish any wrongdoing by companies under SEC jurisdiction as well as their auditors. The bill also disallows simultaneous auditing and consulting, while providing for the Board to approve certain exceptions to non-specified non-audit services under this rule.

The pending legislation also makes important strides in ensuring that any gain made by company executives be subject to retrieval if the company has to prepare an accounting restatement due to certain noncompliance with SEC regulations. As Treasury Secretary Paul O'Neill so aptly states in response to the actions of Enron executives, "I really do believe that the CEO is in effect the steward for all the people who work in their organization. And that with that responsibility goes a commitment that the people come first and that the practices are open and above board and without reproach." These executives should not be able to leave their beleaguered companies, pockets stuffed with profits from cashed out stock options, while investors and employees suffer the consequences of questionable company practices.

With the unanimous passage of the Leahy amendment, the Senate recognized the need to strengthen penalties for the punishment of those involved in corporate crime. For example, the amendment created a new felony for persons involved in the destruction of evidences—to address in the future such indiscretions as the document shredding perpetrated by Arthur Andersen's Enron Audit team. In addition, the Leahy amendment grants important whistleblower protections to company employees—like Enron's Sherron Watkins—who bravely report wrongdoing occurring within their own corporation.

The bottom line is that integrity and trust are at the core of a successfully functioning market system. These recent business scandals have severely damaged this foundation. And as with any foundation in disrepair, leaving unaddressed the damage caused by lost faith in the system will lead to continued instability, or worse.

Therefore, we in Congress have an obligation to do what we can to maintain and build investor confidence and faith in our free market system. I believe that the legislation we are considering today is a crucial first step toward that end, as well as ensuring the full rebound of our floundering economy.

Mrs. FEINSTEIN. Mr. President, I rise in support of S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

Nearly every day, it seems, the front pages of our newspapers are awash in stories about the latest corporate accounting scandal. Just 3 weeks ago we learned that WorldCom hid $3.8 billion in expenses in the last five quarters alone.

And WorldCom is merely the latest member of an increasingly large group of public corporations that have knowingly deceived shareholders, directors, and, in some cases, their own auditors. WorldCom, Enron, Tyco, Global Crossing, Xerox—the list goes on and on.

Much attention has been focused on the huge sums that CEOs and other senior executives have extracted from these companies in

the form of incentive pay, but even those large sums pale in comparison to the total shareholder value that has been destroyed as a result of these disclosures. At its peak, WorldCom's market capitalization exceeded $190 billion, making it, for a time, the most valuable telecommunications services company in the world. Now, WorldCom shares are effectively worthless.

Despite a slowdown in the telecom industry, some of the value of those shares might have been preserved had its executives relied on sound management, instead of deceptive accounting, to make their numbers.

Who will suffer most from the immense value decline associated with WorldCom and other companies that have deceived their investors? Not the senior executives, most of whom have stashed away enough of their pay to let them spend the rest of their days in comfort. The people who will really suffer are the thousands of employees whose retirement savings were proudly invested in company stock; or the millions of public employees whose pension funds held shares in these companies. Those are the people who will bear the brunt of this value decline.

CalPERS, the pension fund set up to invest the retirement savings of 1.3 million public employees in my home State, has estimated that it suffered a $580 million loss on WorldCom stocks and bonds. That means that the average California public employee lost over $440, not including any investments in WorldCom they may have held independently.

To give you some perspective on that amount, the amount of money lost by California public employees due to the WorldCom fraud alone is likely to exceed the entire sum of the tax rebate checks they received as part of the President's tax cut last year.

In fact, every American who invests in our stock markets will suffer as a result of these scandals, because every scandal further tarnishes the reputation of American corporate honesty for investors around the world. In recent months, those investors have pulled billions of dollars in investments out of our country, further reducing the value of stocks and weakening the dollar.

The only way that we can turn this culture around is by fostering a corporate environment that rewards honest management by senior executives and severely punishes fraudulent activities. That is exactly what would be achieved by the bill proposed by Senator Sarbanes.

The Sarbanes bill tackles many of the major problem areas associated with recent corporate scandals. Most importantly, the bill would make it much more difficult for public companies to bypass or trample over auditors in attempt to produce inaccurate or deceptive financial statements.

For the first time, the Sarbanes bill creates a truly independent accounting oversight board, staffed with objective, unbiased overseers, who can enforce rules and prosecute violators without having to vet their decisions elsewhere. Unlike the Public Oversight Board, which depended on fees from the very auditors it was meant to regulate, this new board will be funded by mandatory fees paid by all public companies. These are fees that cannot be withheld at the whim of those who have the greatest interest in undermining the work of the board.

The Sarbanes bill does not stop at the creation of this new board, however. Rather, the bill strengthens areas of the law that have proven inadequate to prevent the fraudulent corporate behavior that has become so prevalent today.

The Sarbanes bill prevents auditors from controling the entire financial reporting system at an individual company by both designing the internal audit system, and then purporting to offer an unbiased external audit. The bill will also stiffen the resolve and oversight of board of director audit committees by requiring, among other provisions, that all committee members be independent and that they be given free reign to question auditors without executive officers present.

But rather than rely solely on increased oversight, the bill moves to reduce conflicts of interest at their source, by requiring the CEO and CFO of a company that has had to restate its financial accounts to disgorge any bonuses or other incentive pay they received in the year prior to the misstatement.

Moreover, under an amendment sponsored by Senator Schumer and myself, company loans to executive officers are now prohibited, sharply limiting the types of "hidden" compensation that can be offered to executives without being fully disclosed to shareholders. Our amendment passed by a voice vote and will go a long way toward preventing the types of loan-related abuses prevalent at WorldCom, Global Crossing, and other companies now under investigation by the SEC for loan-related abuses.

When Senator Sarbanes drafted this bill, he focused on the single reform that matters most: increased transparency. Unfortunately, we may witness more corporate failures like those of Enron or WorldCom. These are failures that are brought on by over-investment, the accumulation of excessive debt, or an ill-conceived belief in markets or services that never live up to expectations.

What we cannot abide by, and what the Sarbanes bill goes a long way toward preventing, is the ability of senior executives to hide those bad decisions in misleading financial statements. By ensuring true auditor oversight, creating meaningful penalties for senior executives who defraud investors, and putting in place new disclosure requirements, this bill will dramatically increase the quality and timeliness of the information available to individual investors.

The United States is blessed with the best-regulated markets in the world, and for that we have been rewarded with tremendous foreign investment and a leadership position in world financial markets.

A vote in favor of this legislation is a vote to strengthen our position and avoid a wholesale loss of investor confidence that would be perilously difficult to restore.

Mr. HATCH. Mr. President, I wish today to express my support for S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002. I am pleased that the Senate is acting decisively to impose harsh, swift punishment on those corporate executives who exploit the trust of their shareholders and employees while enriching themselves. The recent corporate scandals demonstrate just how important it is to hold corporate executives accountable. I believe it is equally important for prosecutors to be

provided with the tools necessary to aid in the investigation of these forms of fraud.

During this debate, our colleagues on both sides have consistently called for increased penalties for corporate fraud offenses. This week, as the Dow Jones index plummeted nearly 300 points—representing the biggest single day point drop since the week following the attacks of September 11 we voted unanimously to adopt a series of amendments that will strengthen criminal fraud penalties and create new criminal fraud offenses. I cosponsored an amendment with Senator Biden to enhance white collar penalties. And I supported an amendment offered by Senator Lott, which incorporated the President's proposal by enhancing white collar penalties, supplementing existing criminal laws, and increasing the Security and Exchange Commission's administrative powers to enforce this Nation's securities laws. I also supported Senator Leahy's amendment, a measure I worked to improve in committee. This amendment includes new criminal and civil provisions that I believe will also assist in deterring and punishing future corporate wrongdoing.

Further, I am glad to see the Senate finally considering legislation that will overhaul government regulation of the accounting industry. I agree with my distinguished colleague from Maryland that there is an inherent conflict of interest between internal and external auditing. The same people should not be installing the internal control system, performing the internal audits, and then reporting on the financial statements. The external auditor sometimes has to be tough as nails, and willing to disagree with its client's top executives. It is hard to be the bad cop when you are also the personal trainer.

However, Congress cannot always second-guess the desires of investors. In some cases, stockholders, bondholders, and other stakeholders will be worse off if Congress imposes too strict a barrier between consulting and auditing. This is especially true for small businesses that may not be able to afford to hire both a consulting firm and a separate accounting firm. And, as the President has noted, in our fast-changing economy, Congressionally-imposed barriers between different business practices can end up becoming Congressionally-imposed barriers to productivity growth.

I think the bill before us represents an effort to strike a good balance between these two competing goals of auditor independence and business innovation. It prevents internal and external audit work from being done by the same firm, and it establishes clear lines of responsibility and accountability. At the same time, the corporation's independent audit committee will be permitted to authorize certain consulting services if they are convinced it is in the shareholders' best interest. This audit committee, consisting of members of the client's board of directors, will be required by law to be completely independent of the corporation itself. This will mean that if the CEO and other top corporate officials believe it is in their company's best interests to have their accounting firm help with, for example, tax consulting and preparation, the corporate officials will have to argue the merits of their case before the independent audit committee. That kind of independence makes good sense, and it makes good law.

The Federal Government needs to help investors whether banks, pension funds, or individual investors in their quest for accurate information about the financial condition of America's businesses. Doing so is crucial for our economic long-term health. While Enron's and WorldCom's financial shenanigans contain many differences, the similarities are far more important. These were both firms that borrowed too much money during the expansion years of the late 1990s. And when it started getting tough to make the debt payments, both firms tried to hide their financial difficulties through creative bookkeeping, cooked up at company headquarters. They succeeded for a time, but the combination of investor vigilance, media investigations, and government scrutiny are eventually bringing the facts to light.

If there had been real financial transparency, both current stockholders and potential investors could pierce the veil of bookkeeping to immediately see these companies' true financial situation. This may not have prevented the painful layoffs and tragic loss of retirement assets by thousands of employees. However, with more accurate and timely information, investors, directors, analysts, financial institutions, and others could have intervened earlier and helped to restructure these firms before all-out catastrophe threatened. When it comes to business information, knowing sooner is always better than knowing later.

And even more importantly, if corporate officials had faced the threat of serious jail time and the certain knowledge that their financial and accounting capers would be exposed to the world, they would have been much less likely to have overborrowed and underdisclosed in the first place. Mr. President, the bill on which we will vote today, on which Senator Sarbanes and many of our colleagues have worked so hard, contains solid provisions that I believe will put real fear of serious consequences into the minds of corporate wrongdoers.

Does this bill represent a perfect solution to the corporate accountability issues presently facing our country? Of course not. I would have written a different bill in several respects. However, I believe that the bill is a good attempt to balance competing interests and different political philosophies. As the bill goes to conference with a House-passed bill that has some significant differences, I expect the balance to improve even further.

Strengthening corporate accountability is crucial to our Nation's long-term welfare. If Congress and the President can act together to help increase corporate transparency and restore investor confidence, then businesses will be better able to raise investment capital. Greater access to capital will enable U.S. businesses to fund the groundbreaking research and to purchase the high-tech equipment that is the foundation of America's long-term prosperity. And Americans from all walks of life will reap the rewards.

Mr. MCCAIN. Mr. President, I rise today as a proud cosponsor of amendment No. 4283 that is being offered by Senator Levin. The amendment says that the standard-setting body for accounting principles that is set up in this bill shall review the accounting treatment of employee stock options and shall within a year of enactment of this act adopt an appropriately generally accepted accounting principle for the treatment of employee stock options.

Unfortunately, this body is not going to get the opportunity to vote on this reform or the reform I proposed last week requiring the expensing of stock options. We want to help restore investors' confidence for the long run, but we are being denied an opportunity to do this. A simple vote on this amendment is all we ask. And yet, we are being denied, and that is truly regrettable. I see no reason that a vote should not be permitted on this amendment, but let's face it—the fix is in.

I want to talk more about the expensing of stock options.

Americans have heard from the President and practically every Member of the Senate about the vital need to restore trust and transparency in business practices so we can begin to repair investors' faith in the honesty of our companies and in our markets. We need more transparency on a company's books so that any person wanting to invest their hard-earned money has a true financial picture of the company they are planning to invest in.

This issue of expensing stock options is not going to go away. Look at what has just happened. Coca-Cola, a Fortune 100 company, just announced that it will begin in the fourth quarter to treat all employee stock options as an expense. And I believe more companies will follow Coca-Cola's lead. It is only a matter of time.

Before I yield the floor, I would like to read a quote from a July 22, 2002 Weekly Standard article, "Big Businesses Bad Behavior," in which economist Irwin Stelzer, Director of Regulatory Studies at the Hudson Institute, eloquently explains why governmental action is needed to restore faith in our financial institutions. The "opposition of important segments of the business and accounting communities to reform," he writes, "means that government must take on the burden of revising the institutional framework within which business operates—setting the rules of the game that will allow markets to do their job of allocating human and financial capital to its highest and best uses. As Milton Friedman, no fan of big government, has written, society needs rules and an umpire 'to enforce compliance with rules on the part of those few who would otherwise not play the game.' " I couldn't agree more.

I ask unanimous consent that the following articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Weekly Standard, July 22, 2002]

BIG BUSINESS'S BAD BEHAVIOR

(By Irwin M. Stelzer)

No sensible person can quarrel with what the president told the Wall Street biggies he addressed last week. Crooks should be forced to disgorge their ill-gotten gains, and should go to a jail for extended periods. Enforcement agencies should be given adequate resources. Corporate executives should be held responsible for the accuracy of what they tell shareholders, disclose their compensation in annual reports "prominently and in plain English," and explain what their "compensation package is in the best interest of the company" Board members should be independent and "ask tough questions." Shareholders should speak up. Most important, chief executive officers should crate a "moral tone" that ensure the company's top managers behave in accordance with the highest ethical standards.

The quarrel comes not with what the president said, but with what he didn't say. In the game of matching his laundry list of reforms against the inevitably longer list generated by the Daschle-Leahy-Sarbanes-Gephardt crowd the president inevitably loses, as last week's unanimous vote of Senate Republicans for the Democrat's

bill proves. Longer sounds better if you're just compiling a laundry list of items aimed at punishing politically unpopular corporate bad guys. Only if there is a conceptual framework within which specific reforms can be created and defended is there any hope that a sensible corporate governance system will emerge from the congressional legislation factory.

Start with the fact that it is important to distinguish the role of government from that of the private-sector institutions that monitor corporate America. The latter can be relied upon to act when the integrity of the system is threatened, not because these private sector players are a bunch of goodie-two-shoes, but for the more reliable reason that honest markets and accurate profit reporting are in their interest. Just as gamblers won't put their bets down when they know a wheel to be rigged, so investors won't put their money into shares if prices can be manipulated by inflated profit reporting or special treatment of insiders.

Hence we have a stream of quite sensible reforms proposed by the Business Roundtable and the New York Stock Exchange, some going beyond those being pushed by the president. And we have companies scrambling to adopt governance rules and accounting practices that will reassure investors that the game is not rigged against them. No CEO wants to see his company's stock battered by investors who fear that share values will evaporate as profits are restated to eliminate the imaginative counting of revenues (claim them now, before the customers pays or even considers paying) and of costs (capitalize rather than expense every outlay, regardless of the life of the item purchased). Plummeting share prices are dangerous to the careers of chief executives.

But, as the president recognized when he called for higher ethical standards, self-interest cannot be relied upon to produce honest business dealings unless that self-interest includes what Adam Smith called a "desire to be both respected and respectable," and such esteem is seen to flow not from "wealth and greatness" but from "wisdom and virtue." Which may be what Bush had in mind when he said that we need "men and women of character, who know the difference between ambition and destructive greed" to lead our major corporations. And it may be what he had in mind when, immediately after delivering talk, he returned to Washington to award the Presidential Medal of freedom—America's highest civilian honor—not to the Nations' richest (Intel founder Gordon Moore may have been the one exception), but instead to folks who have enriched our national life with their sharp iconoclasm (Irving Kristol), gentle humor (Bill Cosby), and quiet devotion of family and good causes (Nancy Reagan).

Still, neither self-interest reform nor a new emphasis on business ethics can be relied upon to save capitalism from the capitalists. Immediately after the president's speech the White House was bombarded with calls from CEOs protesting his demand that they disclose their compensation packages in easily accessible terms. I well recall the reaction when, several years ago, I made a similar suggestion at a think-tank-sponsored meeting of top business and government officials. One captain of industry replied that he would not tell his shareholders how much he earns lest he encourage kidnappers (as if they would only become aware of his affluence if he revealed it in his company's annual report).

Nor did anything the president said persuade the accountants to call off their lobbyists, who continue to oppose reforms that would make their devotion to the accuracy of their audit statements unambivalent. Or convince CEOs of Silicon Valley and other high-tech companies to bow to Alan Greenspan's call for them to report their share options as the expenses they most certainly are. Again, I recall a discussion that followed a similar proposal I made several years ago. One CEO said that he couldn't place a value on these options for purposes of reporting to shareholders, even though he could value those same options for the purpose of deducting their cost from his profits for tax purposes. Another claimed that if he treated options as an expense, he would wipe out his entire reported earnings, an argument, I suppose, for refusing to account for almost any expense that constitutes a threat to reported profits—what might be called the WorldCom excuse. (For the economy as a whole, experts estimate that expensing of options would reduce aggregate corporate profits by about 8 percent.) Note that the issue is not whether companies, especially start-ups, should be allowed to use options to attract talented staff, but whether they should have to treat this compensation as an expense when reporting profits. As Greenspan points out, refusing to deduct the cost of options diverts capital and other resources from truly profitable to only apparently profitable firms.

This opposition of important segments of the business and accounting communities to reform means that government must take on the burden of revising the institutional framework within which business operates—setting the rules of the game that will allow markets to do their job of allocating human and financial capital to its highest and best uses. As Milton Friedman, no fan of big government, has

written, society needs rules and an umpire "to enforce compliance with rules on the part of those few who would otherwise not play the game."

To keep rules to a Friedmanesque minimum, we need a conceptual framework for reform rather than competing laundry lists. The first step is to understand the limits of criminal sanctions. Yes, it makes sense for the Senate to insist, as it did unanimously last week, that the crimes perpetrated by some corporate managers and accountants be defined as precisely as possible. Yes, criminal sanctions can be used to make life miserable for those caught with their fingers in the till and to deter from evildoing those for whom Adam Smith's "desire to be respectable and to be respected" is insufficient inducement to decent behavior. But, as law professors David Skeel and William Stuntz recently pointed out in the New York Times, "Criminal laws lead people to focus on what is legal instead of what is right. . . . In today's world, executives are more likely to ask what they can get away with legally than what's fair and honest." The Senate was pleased with itself for toughening the laws under which executives will operate, but criminalizing bad behavior is no guarantee of future good behavior—behavior that is not merely indictment-avoiding, but is efficiency- and wealth-enhancing.

Instead, policymakers should turn to that trusty guideline, "Get the incentives right." The problems we are facing stem from the fact that we have provided the four guardians of shareholder interests—auditors, analysts, directors, and corporate managers—with the wrong incentives.

Auditors know that success or failure in their profession depends not so much on the accuracy and realism of their audits, as on their ability to conduct themselves so as not to imperil the flow of consulting fees to their firms. Enron paid Arthur Andersen as much or more in consulting than in auditing fees; Andersen's $12 million in consulting fees from WorldCom dwarfed its $4 million audit fee. It would have taken a brave auditor indeed to fly in the face of these clear incentives and tell Enron's management that placing some item off-balance-sheet might be technically legal, but would obscure the company's true financial condition, or to insist on access to documents that might have revealed WorldCom's recording of current expenses as capital investments. Rather than rely on such strength of character, some 70 percent of the directors surveyed by McKinsey & Co. now say they will in the future oppose the granting of such contracts, a policy that Arthur Levitt, Bill Clinton's SEC chairman, was unable to push through over the massed opposition of the accountants' lobbyists. All of which makes Bush's silence on this subject rather odd, and the Senate Democrats' insistence on a broader prohibition on consulting than is contained in the House Republicans' bill more likely to get the auditors' incentives lined up with shareholder interests.

Once those incentives are in place, other provisions of the House and Senate bills become unnecessary. Both bills call for still more regulation of auditors, and create still another regulatory body to set and oversee accounting standards. One need not be an apologist for the accounting profession to suggest that such a move would merely continue the failed practice of attempting to control auditors by closely supervising them. There is no reason to believe that such supervision will be any more successful in the future than it has been in the past, especially since in the end auditors are required only to say that they followed often complex and arcane rules that necessarily involve the exercise of judgment.

Instead of such ongoing regulation, including half measures that merely restrict auditors from engaging in some specified form of consulting activity, let's get the incentives right by complete, mandated separation of the audit and consulting businesses, as John McCain proposes. Lead the CPAs not into temptation, and reliance on porous Chinese walls becomes unnecessary. Auditors will compete for business on the basis of their ability to provide a product that gives investors confidence in the transparency and accuracy of the company accounts, with the uplifting effect that will have on the prices of their clients' shares. (Audit firms are unlikely to compete on price, since the risks associated with the audit business have risen. There are only four major firms, and rotation of auditors on something like the five-year basis favored by Senate Democrats, although necessary to prevent over-identification between client and auditor, is a classic cartel market-sharing arrangement—all legal, in this case.)

Analysts are another group who now face perverse incentives. Investors may have been naive to believe that these students of income statements, balance sheets, and other economic data would provide honest advice about a company's financial condition and prospects. But they had a right to such a belief, since the commissions they pay their brokers are supposed to be in return for such advice. Along comes New York State Attorney General Eliot Spitzer and revelations that some of these supposed agents of the shareholders' interests are recommending stocks they know to be "shitty" in order to win investment banking business for their partners and in-

creased compensation for themselves. All of this in the presence of Chinese walls erected to separate bankers from analysts. It took no Joshua-plus-trumpet to bring these walls down; the prospect of hefty banking fees was quite enough. Jack Grubman, the Salomon Smith Barney (a division of Citigroup) analyst famous for his enthusiastic recommendations of WorldCom stock, last week told the House Financial Services Committee, "No one can sit here on Wall Street and deny to anybody on this committee that banking is not a consideration in the compensation of analysts of a full-service firm." Forget the double negative: Grubman was conceding that part of his salary, which reached $20 million per year, came from the $140 million in underwriting fees that his firm received from WorldCom over the past five years.

Again, get the incentives right. One way, now preferred on Wall Street, is to write contracts that make analysts' compensation independent of the fees flowing into the investment banking divisions of the large firms. But just how analysts can prosper if the banking division isn't earning enough to pay the rent is unclear. Besides, unless analysts suddenly become willing to issue "sell" recommendations just when their investment banking partners are pitching a company for business, this proposed reform is unlikely to be effective, especially after the current heat is off and congressional attention turns to other matters. True or not, bankers believe that CEOs, being human (yes, most are), are likely to take into account what a firm's analysts are saying about their stock when selecting an investment banker. It would be an unusual CEO, indeed, who would cheerfully receive an investment banker after reading in the morning papers that the banker's analyst-partner had just downgraded his company's stock from a "buy" to a "sell." Many investment bankers—not all, but many—will find ways to persuade their partner-analysts to be team players. Banking fees are large enough to give them an enormous incentive to do just that.

So, let's get the incentives right and mandate a separation of the investment banking and stock-picking businesses, another McCain proposal. Analysts would then have an unambiguous incentive to make the best "buy" and "sell" recommendations they possibly can, so as to build reputations that will attract investors to them. And investors will get something in return for their commission dollars—honest advice from men and women expert in the analysis of corporate financial data, competing with one another to attract clients by creating a track record of picking winners.

Which brings us to Directors. Again, we have a case of skewed incentives. Directors are hired by managers to protect shareholders from, er, those same managers. To make sure the directors remain friendly, executives often shower them with perks and consulting fees, the continuation of which depend on the goodwill of the CEOs they are supposed to be supervising. It is the rare director who chooses to feast on the hand that feeds him, not merely because he is venal, but because the courtesies lavished upon him genuinely persuade him that the CEO is a decent chap, deserving of every million he is paid.

To get the incentives right, directors must be selected by vigorously participating shareholders, most especially institutional shareholders, from a slate of demonstrably independent people who, although well compensated, have reputations worth protecting. Nominations for that slate should come from sources other than the company management, to avoid a you-sit-on-my-compensation-committee-and-I'll-sit-on-yours, selection process. The directors should not accept anything within the gift of the CEO; their directors' fees should be compensation enough, and high enough to provide an incentive to accumulate a record that will persuade shareholders to re-elect them at reasonably regular periodic intervals—perhaps throwing in term limits to make sure that directors and management don't develop too cozy a relationship.

Finally, we come to the CEO's and top managers. How to create incentives to induce managers to act in the interests of the shareholders who own the business has bedeviled students of corporate governance ever since 1932, when Adolph A. Berle Jr. and Gardiner C. Means published their classic "The Modern Corporation and Private Property," detailing the potential for managerial abuse created by the separation of ownership from control of large corporations. Managers placing self-interest above the interests of owners were immune to retaliation by far-flung and essentially powerless shareholders. That situation was partially corrected when Mike Milken and his debt-financed corporate raiders snatched control of many companies from the worst abusers of shareholders' interests, grounded fleets of corporate jets, sold off hunting lodges, and generally sweated the fat out of expenses—a wonderful example of markets working to correct abuses that seemed beyond the reach of regulators.

But nowadays there aren't many people who want to be like Mike, so it is incumbent on policymakers to get managers' incentives right. President Bush's proposal for publication of compensation arrangements in an accessible format would be a step in the right direction, its effectiveness attested to by the howls of outrage it produced from some CEOs. Truly independent boards, created along the lines described above, would be another advance, since compensation committees not beholden to corporate managements are more likely to relate pay to performance than the supine committees that now exist on some boards. Add in the requirement that options be treated as profit-reducing expenses—another McCain proposal that so horrified senators that it has for now been derailed—and you will have a new parsimony that will keep salaries to levels commensurate with effort and performance. Under such a regime, executives would have a clear incentive to spend their time creating efficiencies and new markets, rather than figuring out how to cash in options, and how to persuade their boards to revalue options if poor company performance has driven the stock price below the price at which the options may be exercised, rewarding executives whether or not they have delivered long-term value for shareholders.

This may sound like an awful lot of regulation. But it is of a special, self-liquidating sort. If we adopt policies that get the incentives of all the players right, government can then get out of the way so that the various actors can do their thing—audit, advise on investments, monitor management performance in the interests of owners, and manage the company in a world in which managers' interests coincide with those of shareholders. The right kind of regulation can be a model of minimal—and effective—government.

Irwin M. Stelzer is a contributing editor to The Weekly Standard, director of regulatory studies at the Hudson Institute, and a columnist for the Sunday Times (London).

[From the Wall Street Journal, July 15, 2002]

LEADING THE NEWS: COKE TO EXPENSE EMPLOYEE OPTIONS

MOVE MAY SPUR OTHERS TO FOLLOW AND COULD SHAPE CURRENT TALKS IN SENATE

(By Betsy McKay)

Atlanta—Coca-Cola Co. said it will begin in the fourth quarter to treat all employee stock options as an expense, a move that could accelerate debate in corporate boardrooms over whether to adopt that accounting practice.

The beverage company's decision also could shape the outcome of discussions today in the Senate over whether to instruct a new accounting-oversight board to study the fate of stock options—in particular, whether they should be expensed as other forms of compensation.

Republicans tried Friday to block the measure, offered as an amendment to an accounting-overhaul bill. But Democrats say they will try again before final passage of the underlying accounting bill, expected late today.

"We are in a new environment," Gary Fayard, Coke's chief financial officer, said in an interview. "There had been a loophole in the accounting, and we thought it was the right time to step up to the plate.

"There's no doubt that stock options are compensation," he added. "If they weren't, none of us would want them."

Coke said its decision, announced yesterday morning, will reduce earnings only slightly—by about a penny a share—for 2002. That reflects the fact that Coke doesn't grant options as extensively as do some other companies. And while Coke isn't the first public concern to make the accounting change—Boeing Co. and Winn-Dixie Stores Inc. in recent years began calculating stock options as an expense—its high profile could prompt other businesses to consider calls from investors, regulators and politicians for greater financial candor.

Last week, AMB Property Corp., a San Francisco-based owner of industrial real estate, also said it would record stock options as an expense.

Proponents of expensing say options are compensation and should be treated as such, especially since generous option awards dilute the value of shares outstanding. Opponents say options are difficult to value and argue that expensing would confuse investors, not enlighten them. Changing accounting rules would reduce earnings at some companies.

In 1993, the Financial Accounting Standards Board tried to mandate the expensing of options but retreated in the face of stiff opposition from business leaders and Congress. The issue flared up again after Enron Corp's demise late last year and

has taken on new life with recent disclosures of earnings misstatements at WorldCom Inc.

Coke's Chairman and Chief Executive Douglas Daft raised the idea of recording stock options as an expense about two months ago, Mr. Fayard said, as news of financial scandals continued to unfold. About 10 days ago, with lawmakers calling for tougher accounting standards, Mr. Daft fielded the idea in phone calls to Warren Buffet and some other Coke directors. Mr. Buffett, Coke's largest shareholder, for years has been an outspoken proponent of expensing options.

Mr. Daft pressed ahead with his proposal to make the accounting change last week after President Bush called in a speech for better corporate governance. Mr. Bush didn't embrace the idea of forcing companies to expense options, but numerous economists and financial experts, including Federal Reserve Board Chairman Alan Greenspan, have endorsed the move, and growing investor unease sent stocks plummeting last week.

Mr. Daft convened a meeting at 7 a.m. Thursday in Sun Valley, Idaho, where he and several other directors were attending a conference. The discussion, over breakfast in the condominium of director Herbert Allen, was short. It wasn't hard to win the directors' support; Mr. Buffett, in particular, applauded the move.

"Our management's determination to change to the preferred method of accounting for employee stock options ensures that our earnings will more clearly reflect economic reality when all compensation costs are recorded in the financial statements," Mr. Daft said in a statement. A spokeswoman said he wasn't available for further comment.

"I'm delighted," Mr. Buffett said in a telephone interview. "This tells shareholders what really happens in terms of costs." The new plan, he said, also eliminates bias in structuring compensation packages, encouraging Coke to design packages that fit its and employees' needs without regard for accounting.

While Mr. Buffett said he never pushed Coke to treat stock options as an expense, he said he did encourage the company last week to take a further step and use independent investment banks to determine the fair value of stock options that Coke grants. The move is intended to ease concerns over whether options that are expensed are being properly valued. Coke will ask two investment banks, Goldman Sachs & Co. and Citibank, to price options, and will expense the option value based on the average of those firms' quotes.

Coke said stock options will be expensed over the period in which they vest, based on the value the day they are granted. Coke's 2002 options plan authorizes as many as 120 million shares, or 4.8 percent of the company's share outstanding. The company usually issues 25 million to 30 million shares a year, however.

For 2001, Coke's top five officers received options on 3.7 million shares, including options on one million shares for Mr. Daft. About 8,200 of Coke's 38,000 employees received options during 2001.

Mr. Buffett predicted Mr. Daft's move could make him "unpopular" among other CEOs, but he also said that while business leaders had managed to quash efforts in 1993 to force expensing of stock options, the current environment could force them now to accept it.

"I'm sure a few others will do it," he said. "It may be that good practices drive out the bad."

Sen. John McCain (R., Ariz.) issued a statement applauding Coke's decision and expressing hope that "other companies will follow suit."

Judy Fischer, managing director of Executive Compensation Advisory Services, in Alexandria, Va., said she believes other corporations will follow Coke. "If a corporation can do it without a lot of problems to their bottom line, I think a lot will follow suit," she said.

However, it wasn't clear how other companies will react, particularly high-tech businesses that rely heavily on stock options. A spokesman for Santa Clara, Calif., semiconductor maker Intel Corp., where all employees are eligible for stock options, said he couldn't comment on Coke's move. One lobbyist was skeptical. "I doubt just because one company made this decision that other companies will follow suit," said Ralph Hellmann, top lobbyist for the Information Technology Industry Council, a high-tech trade association in Washington. "Each individual company is going to make its own determination." Looking beyond 2002, Coke's Mr. Fayard said earnings per share will be reduced by about three cents in 2003, with the reduction gradually increasing to about nine cents a share by 2006, he said. But the change won't affect the company's cash flow, he said.

Mr. DOMENICI. Mr. President, I rise first in support of our free market economy. The revelations over the last few months of corporate officials having betrayed the trust of their employees and

their investors is simply unacceptable. These corporate officials must be prosecuted to the full extent of the law and if additional penalties are required, then we should enact them.

But let us not forget, that despite these terrible, unconscionable acts perpetrated by some CEOs on their workers and investors, the principles of our free market economy remain the envy of the world. These principles have allowed our economy to be the most productive, most innovative, most creative system, that has created income and employment only dreamed of in other parts of the world.

One of these principles is property rights. But it seems that some corporate managers have forgotten that the companies they run are not their personal property to operate however they see fit or for their own benefit. The exuberance of the 1990s that Chairman Greenspan warned us about and the extraordinary income and wealth generated during that period, allowed for unethical persons in our business sector to exploit this time of growth for their own selfish purposes and to bend the rules for their own benefit.

So as we pursue new rules to punish those who have betrayed a trust—and we must—let us not allow the pendulum to swing so far that it jeopardizes the innovation and vitality of our economic system for the future. Rather than working against the principles that make our economic system so great, our actions should affirm these principles.

I am angry, shocked and extremely concerned about the revelations that have emerged in the past 6 months concerning the accounting practices of a number of public companies. To operate efficiently our free market system requires a high level of honesty and trustworthiness among its participants, especially among its key decisionmakers.

In the long run our economy—our standard of living—reflects not only our inventiveness and hard work but our moral character. Corporate executives have to be worthy of the key role they play. With all their wealth and high position comes responsibility. Sadly, some executives were not worthy of this responsibility.

Restoring the public's trust is of paramount importance. America's system of corporate governance and its trust in our financial reporting mechanisms have been shaken and restoring this trust is of critical importance. It will take more than words to restore that confidence and trust. It will take something that I, Senator Dodd and others have been lecturing on for many years, and this is something not easily legislated. It will take a renewed awareness of the ethics of responsibility. It will take a reaffirmation that "Character Counts."

Reaffirming that "Character Counts" means not only encouraging our young people to live by the six pillars—trustworthiness, respect, responsibility, fairness, caring, and citizenship—but expecting that our corporate leaders adhere to these traits and conduct themselves accordingly.

Cooking the books has hurt thousands and thousands of hardworking Americans. American companies must adhere to the highest standards of public accounting ethics. Despite these abuses, as I have said our economy remains strong and the vast majority of

CEOs are honest and abide by the rules. Unfortunately, a few bad characters have tainted the reputation of our enterprise system.

The President and the Congress are addressing reform. I will support these reform efforts that are aimed at regaining trust and confidence in our Nation's financial markets and ensure that American workers are protected from unscrupulous corporations. No violation of the public's trust can be tolerated.

But I also believe more can be done, and this bill before us moves us in that direction. I support:

Full and accurate disclosure: I endorse the SEC's proposals to require CEOs to certify that their financial statements completely and accurately reflect the true condition of the company.

Trust and accountability: Corporate leaders must be held accountable for any abuse of public trust. I believe that executives should be required to return moneys they received as a result of fraudulent accounting practices, as embodied in the Senate bill.

Independence: Boards of directors must exercise independent judgment and a substantial majority of board members must be independent of management.

Auditing reform: Strong oversight of the accounting profession is essential if we are to ensure independence of auditors and credibility of the auditing process.

Pension protection: I fully support steps that will protect the retirement savings of American workers. Workers should have freedom to diversify and monitor their own retirement funds, giving confidence that their investments will not fall prey to unethical executives.

I urge the SEC to move forward with the implementation of its proposed reforms. And, I strongly believe that the NYSE and the NASDAQ must proceed to improve their listing standards. I support the reform that works to strengthen our free enterprise system. It is our obligation as a Congress and as a country to ensure that the unethical few that are causing hardship for so many hardworking Americans, be swiftly brought to justice and face jail time. We will restore faith in our economic system for it is the greatest in the world. I support passage of the Senate bill.

Mr. COCHRAN. Mr. President, while I support the passage of this bill, I think we ought to recognize the role the Administration is already playing to deal with these serious problems of corporate responsibility.

I was pleased that President Bush announced last week his suggestions for corporate accounting reform. The President forcefully argued that higher ethical standards are an imperative to restore confidence in corporate America. Those standards should, in his words, "be enforced by strict laws and upheld by responsible business leaders" and that "corporations should not be disconnected from the values of our country."

I also support the President's executive order to create the Corporate Fraud Task Force. Combined with new criminal penalties for corporate fraud, this taskforce can help bring stability to our Nation's economy. The President has also asked the Securities and Exchange Commission to adopt new rules to make sure that auditors are truly independent from the businesses which they audit.

We also need to be sure the SEC has the resources it needs to carry out its other important responsibilities.

I am hopeful that the Appropriations Committee will be able to provide the necessary amount of funding for the SEC to hire the enforcement officers it needs and to acquire state-of-the-art technology that is necessary for the performance of its duties.

With the passage of this bill by the Senate, we will be able, in conference, to work with the other body to produce a good bill that deals effectively with the problems in this area of very legitimate concern to our country.

Mr. LEAHY. Mr. President, I want to compliment the majority leader for turning to the Sarbanes bill and the issue of corporate responsibility. I also want to thank Chairman Sarbanes for his leadership on the impressive bill that he has produced in the Banking Committee.

So many times all that the public hears about Congress is about turf and partisanship. This comprehensive reform effort disproves those claims. Thanks to the leadership of the Majority Leader and Senator Sarbanes, the bill that we are about to vote on is a tough, comprehensive reform package that enjoys broad bipartisan support in the Senate. It brought together the best ideas from many Senators, from many Committees, and from both parties.

From my standpoint, as Chairman of the Judiciary Committee, this has been an opportunity to benefit once again from the wonderful partnership that we have forged between the Banking Committee and the Judiciary Committee. After September 11, our two Committees worked together to write the anti-terrorism provisions of the USA Patriot Act that dealt with money laundering. Here, with the 97-0 vote to adopt of the provisions of the Corporate and Criminal Fraud and Accountability Act, as a Leahy-McCain amendment to this bill, Senator Sarbanes and I have again united the forces and expertise of our Committees. This time we have done so to craft comprehensive laws to deal with financial wrongdoing, and again done so with bipartisan support in both Committees. I think that the final product is better and more complete because of our joint work. Thank you Chairman Sarbanes.

But the joint effort did not stop with Senator Sarbanes and myself. Senators Biden, Hatch and the Minority Leader offered provisions that were also adopted by the Senate, adding aspects of the President's recent proposal. That is an impressive show of bipartisanship because those proposals were only made after the Senate had already begun debate on this bill. Despite the White House's refusal to help us shape our more comprehensive proposal, we did not hesitate to include the President's suggestions in our final product.

The bill was further perfected by Senator Edwards' thoughtful amendment dealing with the conduct of corporate attorneys. Once again, we were able to draw on the expertise of a particular Senator to enlist the help of lawyers in stopping corporate fraud, not designing it. In short, we started with a fine bill from Senator Sarbanes, and have strengthened even further, never losing our strong bipartisan support.

We need to remind ourselves of the underlying reasons for the bipartisan support behind these measures. Enron brought it to

light, but it goes deeper. It's about a basic fairness and equity that transcends party lines. It's about rewarding people who play by the rules and punishing people who don't. It's about the basic American ideal of treating all people equally under the law.

We cannot have a system where a pickpocket who steals $50 faces more jail time than a CEO who steals $50 million. The integrity of our financial system depends on accountability. The mounting scandals and declining stock market have damaged the integrity of our public markets and we must restore it.

I was proud that the Judiciary Committee, joined by the Majority Leader and a bipartisan group of Senators including Senator McCain and others was able to make such an important contribution to this effort by contributing the provisions of S. 2010, the "Corporate and Criminal Fraud Accountability Act," as it was unanimously reported out of the Judiciary Committee in April, as an amendment to the Sarbanes bill. Both in Committee in April and again last week on the floor, not a single Senator from either party has voted against the provisions of the Corporate and Criminal Fraud Accountability Act.

We worked hard to reach across party lines on this measure, and I hope that the House of Representatives acknowledges that fact. I was glad to see in last Friday's newspapers that Speaker Hastert also endorsed the joint Sarbanes-Leahy measure after its adoption. I hope that the President can follow the leadership of Speaker Hastert and support the Senate measure as this bill moves forward.

Recent events have served as a stark reminder that we need to reexamine our laws to make sure that they reflect our important and shared values of honesty and accountability. Enron has become a symbol for the torrent of corporate fraud scandals that have hit the front pages and battered our financial markets. Tyco, Xerox, WorldCom, Adelphia, Global Crossings, the list goes on.

The things that happened at Enron did not happen by mistake. They were not the result of one or two "bad apples." Senior management at Enron, assisted by an army of accountants and lawyers spun an intricate web of deceit. They engaged in a systematic fraud that allowed them to secretly take hundreds of millions of dollars out of the company. This kind of fraud is not the work of a lone fraud artist. Rather, it is symptomatic of a corporate culture where greed has been inflated and honesty devalued.

Unfortunately, as I have said and as the experts warned at our February 6 hearing, Enron does not appear to have been alone. Each week we read of corporation after corporation that has engaged in misconduct, and these are not small or marginal corporations. These are major mainstays of corporate America. The web of deceit woven by such publicly traded companies ensnares and victimizes the entire investing public who depend on the transparency and integrity of our markets for everything from their retirement nest eggs to their children's college funds. That is why this comprehensive reform is urgently needed to restore accountability in our markets.

The Leahy-McCain amendment to the Sarbanes bill, approved 97-0 by the Senate, provided important provisions to ensure just such accountability.

The Corporate and Criminal Fraud Accountability Act which I authored provides tough new criminal penalties to restore accountability and transparency in our markets. It accomplishes this in three ways:

punishing criminals who commit fraud, preserving evidence to prove fraud, and protecting victims of fraud.

Here are some of its major provisions as adopted by the unanimous Judiciary Committee in April and the unanimous Senate last week: It establishes a new crime of securities fraud, with a tough ten year jail sentence. It breaks the "corporate code of silence" by providing, for the first time, Federal protection for corporate whistleblowers who report fraud to the authorities or testify at trial. It closes loopholes and toughens penalties for shredding documents as we learned had occurred at Arthur Andersen. It requires audit documents to be preserved for 5 years and provides tough criminal penalties for their destruction. It protects victims the right to recoup their losses by preventing fraud artists from hiding in bankruptcy or concealing their crime and using an unfair statute of limitations to hide.

With these bipartisan provisions and others incorporated, this bill we have produced is truly a comprehensive measure. It tightens regulation of corporate misconduct, but it now also provides an important deterrent to fraud artists. This bill is going to send wrongdoers to jail and save documents from the shredder, which sends a powerful and clear message to potential corporate wrongdoers "don't do it." As a former prosecutor, I have discovered that nothing focuses attention to morality like the prospect of a long prison sentence.

In the Senate, as we have been debating and shaping specific and comprehensive reform proposals, we had been trying for months unsuccessfully to get the President's support. The Administration had stayed on the sidelines during this important debate.

For whatever reason, perhaps the mounting scandals or the declining market, the President decided last week to speak out against corporate fraud. He spoke again today on our economy. I welcome his participation and hope that he will follow up his speeches by supporting real reform. It is amazing to me that with such broad bipartisan support and now on the verge of Senate passage, that the Administration has still not given a clear statement supporting the bill on which we are now about to vote.

Although I now understand that a White House official reportedly said that they agreed with the "goals" of this reform bill, I was disappointed that the President has not yet voiced his support for this bipartisan measure about to pass the Senate. Supporting the "goals" is a good first step but it is nonetheless a baby step. I read in the paper last week that the President does not want to "tip his hand." This is not a game of poker, however. This is the time for Presidential leadership with the integrity of our markets at stake. When there are specific proposals passing the U.S. Senate by an overwhelming majority of Senators from both parties and the Speaker of the House is supporting the measures as well one wonders what it will take for the President to express his opinion.

For those of us in the Senate, like myself, Senator Sarbanes, Senator McCain, Majority Leader Daschle, and others who have

worked hard to come up with specific and bipartisan reform proposals, the "goals" have been clear for a long time. It is now time for comprehensive action.

While the President's proposal was short on details, some of it did sound familiar to those of us on the Judiciary Committee. Three of the President's proposals are found in S. 2010, the Corporate and Criminal Fraud Accountability Act, which we adopted 97-0 in the Senate: One, The President advocates for strengthening the laws punishing document shredding and obstruction of justice. That is in our bill. Two, The President wants the Sentencing Commission to raise penalties for corporate misconduct. That is in our bill. Three, The President wants the Sentencing Commission to raise the penalties for the existing fraud laws. That is in our bill as well.

I am glad the President adopted three proposals from my bill, even if he will only say that he supports the " goals." As I said, we were also quick to write up his ideas into concrete proposals and include them in our bill. Unfortunately, the President's proposal failed to include many of the important provisions in the bipartisan Leahy amendment. It fails to create a new crime to punish securities fraud to directly punish corporate wrongdoers. It fails to provide whistleblowers with protection that will break the corporate code of silence. Remember, you can put whatever criminal laws you want on the books but unless there are witnesses who are not scared to help prosecutors prove what happened no one will be held accountable. It fails to protect victims of fraud by allowing them to recover their losses from a fraud artist who declares bankruptcy. It fails to establish a realistic statute of limitations to allow victims to recoup their losses when a fraud artist can manage to conceal his crimes for long enough, a change that has received strong bipartisan support dating back to the SEC under former President Bush.

As I said, I was glad to hear the President finally join this reform debate. Now is not the time, though, for half measures. We need comprehensive action. We were glad to include the President's proposals in the Senate bill, but we unanimously agreed to more comprehensive reform, including the Leahy bill.

Now I hope that the President will support such comprehensive reform as is found in this bill. I hope that his rhetoric is backed by action and that his generalities are backed with specifics.

Speaker Hastert has now publicly supported the Sarbanes bill and the Leahy amendment. I hope that the President will support the bill's provisions as it moves forward to conference and will appeal to other Republican House members not to water it down. That will be the true test of his resolve to restore accountability to our markets.

It is time for action, comprehensive action that will restore confidence and accountability in our public markets. The Sarbanes bill, including the unanimously approved Leahy-McCain amendment incorporating the Corporate and Criminal Fraud Accountability Act, provides just such action.

Let's pass this comprehensive bill and send the President a strong measure to sign into law. Congress must act to restore integrity in our capital markets to strengthen our economy.

Mr. REID. Madam President, I ask unanimous consent that at 5:45 p.m. today all time postcloture expire, and that all the time available, not counting the time available for Senator Byrd, be equally divided and controlled between the two managers or their designees; that without further intervening action, the Senate proceed to vote on or in relation to the Carnahan amendment No. 4286, to be immediately followed by a vote in relation to the Edwards amendment No. 4187, as amended, if amended; that upon disposition of these amendments, the bill be read a third time, and the Senate vote on passage of the bill; that upon passage, the Banking Committee be discharged from further consideration of H.R. 3763, the House companion, and that the Senate then proceed to its consideration; that all after the enacting clause be stricken and the text of S. 2673, as passed, be inserted in lieu thereof; that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; that upon passage of H.R. 3763, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate; that all succeeding votes in this vote sequence, after the first vote, be limited to 10 minutes; that there be up to 2 minutes of explanation prior to each vote, with no further intervening action or debate, with the 2 minutes equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Madam President, reserving the right to object, I would like to propound a parliamentary inquiry. Under this agreement, when 5:45 comes, we would begin to vote on the two amendments, and then vote on final passage, and no other amendment would be in order under the agreement; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAMM. Madam President, I do not object. I think under this agreement we will have time to go back and forth. I would say that if it saves anyone time, we do not need a vote on the two pending amendments. We could do them by voice vote and proceed to final passage.

Mr. REID. We will be happy to discuss that after the UC is entered.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. REID. Madam President, I ask unanimous consent that upon disposition of H.R. 3763, passage of S. 2673 be vitiated and the bill be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I want to begin by very briefly responding to Senator Kennedy. I was somewhat taken aback at his suggestion that we set aside the two amendments and allow a nongermane amendment to be offered when, in fact, on a bipartisan basis, earlier this week, we decided not to deal with pension reform.

So I want to make it clear to my colleagues that I am perfectly happy to deal with pension reform. I think a bipartisan consensus is evolving on pension reform. But we made a decision, on a bipar-

tisan basis, earlier this week, not to put pension reform on this bill. Its day will come. I want to make that clear.

Madam President, let me try to respond to several points that were made earlier today. I will try to be brief so that my other colleagues will have an opportunity to speak on my side of the aisle.

I want, first, to talk about stock options. Then I want to talk about the bill before us and where we go from here. And I will try to be brief on all of them.

First, let me make it clear that stock options are pretty important to the American economy. More than 6 million nonexecutive workers in America receive stock options every year. So when we finally get around to having a policy set on stock options—which I hope will be done by FASB, the accounting board, based on logic and reason—we need to take into account that 6 million people who are not executives of companies get stock options every year.

We want to be sure that we are not endangering their ability to own a piece of America with the reforms designed to deal with a few people who violated the law in some cases, who did not act honorably in some cases.

We want to be sure we do not deprive or preclude 6 million workers who are not executives—or people who did not violate the law, did not act dishonorably—from the ability to get stock options.

Let me also say, in areas such as biotechology and the computer programming industries, that 55 percent of rank and file employees get stock options.

So I just want to urge, as we are going about our business here, with all this talk about people who have made millions, that we do not forget that millions of Americans benefit from this, and we need to be careful about what we are doing.

Let me say, secondly—and Senator Bennett made the point today; I made it last week—if you listen to what is being said in this debate, a big point is made of the fact that in 1994 we saw an explosion in the use of stock options and low-interest loans and other nonconventional forms of executive compensation.

What happened to trigger that is in 1993, as a gratuitous provision in the 1993 tax bill, we changed the law so that if you are compensating an executive in corporate America and you pay that executive more than $1 million a year, you cannot count that compensation as a business expense. Of the top 30 companies in America, the level of compensation at that point was already substantially above the million-dollar mark. So because of what Congress did in 1994, having passed a law that said you could not pay people with a paycheck above a certain level and have it count as a business expense, we should not have been surprised that accountants and financial planners and people who were smart enough to make over $1 million a year found other ways to receive compensation.

So I want to make it clear that the point I am making is, if you are looking for somebody to point the finger of blame at here—and many people are trying to do that—I think Congress is a good institution to point at because Congress eliminated the ability of companies to pay their executives the old-fashioned way.

A lot has been made about who is at fault in all this. I would just simply make the following points. If somebody said to me: I know you don't know what caused all these current problems, but

tell me; I am going to force you to tell me what you think the cause was. I would say: The inadequacy of GAAP accounting, which, in its current incarnation, works very well for old-style companies with assets that are written off.

GAAP accounting fits the steel industry perfectly. It fits the automobile industry pretty well. But the problem in the 1990s—when productive power became knowledge, when companies with relatively little in the way of assets gained huge market caps because of people's assessment of their know-how and the technology embodied by the company—was that GAAP accounting did not keep pace with the reality of the world that we live in today and that we lived in the 1990s.

It is very complicated to try to figure out what the values of these companies actually are by any conventional method where you are adding up their acquisition cost of assets and depreciating those assets.

This created a giant void in GAAP accounting in the 1990s, and people pushed the envelope within that void. In some cases, it appears they violated the law; in other cases, they have certainly violated standards of ethics.

Nothing we are doing in this bill is going to solve the problem in GAAP accounting. I am confident that over time we will find new ways of developing generally accepted accounting principles that don't rely on concepts such as goodwill, which don't make a lot of sense economically. But I do believe the bill before us is a step in the right direction.

There are differences of opinion. Before we go to final passage, I want to make clear what those differences are. Senator Sarbanes and I both believe that we should have an independent accounting board. We both believe that that board should set and enforce ethics standards. We both believe that part of setting ethics standards is looking at auditor independence.

Senator Sarbanes believes that we should write in law in some great detail what is entailed in auditor independence. I believe the problem with that is that while the law might fit General Motors, there are 16,254 publicly traded companies in America, and I am concerned that there is no law that Congress can write that will fit all 16,254 companies.

My second problem is, if you make a mistake in writing the law, then you have to go back and pass another law to correct it. If we had set out Glass-Steagall, separating banking and securities, by regulation, my guess is that by the mid 1950s, we would have concluded that that was a mistake, and we would have fixed it. But since it was written into law, it couldn't be fixed by regulation. Regulators tried to make marginal changes. We ended up with a very unstable system, and we were only able to fix it by law in 1999.

A second problem with writing the details of these different standards such as auditor independence into law is if you make a mistake, it is hard to fix it; whereas if you set up a board and, based on their expertise, they set out a regulation, if they make a mistake, they can fix it.

My final point on setting these standards by law is, one size fits all never works. What we need is the flexibility for this board to

set a standard and then determine, based on the circumstance of the individual company, what makes sense.

I intend to vote for the bill on final passage. There are probably 10 things in the bill I am opposed to. But we are going to conference with a House bill that is very different. I am confident that in conference we can write a bill that will be supported by both Houses of Congress and signed by the President. I think we can strengthen the bill where it needs to be strengthened. I think we can provide flexibility where it is needed to bring in reason and responsibility.

Our objective has to be to fix what is broken in American capital markets and do it while minimizing the cost we impose on businesses, investors, and workers that did not violate the law and did not act in a nonethical manner.

The sooner we can get to conference, the sooner we can write this bill and see the bill signed into law. We have reached the point where we have a bill before us that addresses the major issues that we decided to address.

I know people have been unhappy about the inability to offer amendments today. The plain truth is, we have 97 first-degree amendments that have been filed and 24 second-degree amendments, and there was never any possibility that those amendments could be offered. We tried to come up with amendments that were agreed to and in the process, ended up excluding some people.

Let me conclude my remarks, at least for the time being, by congratulating Senator Sarbanes on his leadership on this bill. Overall, he has done a good job. I do not agree with him on each and every part of it, but he has always been open. We have had many good discussions. I am confident that in the end we will write a bill that will be broadly supported and that will be in the interest of the country.

The PRESIDING OFFICER. Under the previous order, the hour of 4:55 having arrived, the Senator from West Virginia is recognized.

SUPPLEMENTAL BILL

Mr. BYRD. Madam President, there is a game being played with the critical issue of homeland security. It is a political game which could have disastrous consequences.

The White House is talking big about homeland security, exhibiting strong presidential interest in homeland security, trotting out proposals for a whole new Department of Homeland Security, and publicizing alerts.

It is strange, then, strange indeed that despite its public pronouncements on homeland security, the White House refuses to back the rhetoric up with resources.

Twice—once last year, and currently—large bipartisan majorities in both Houses of Congress have withstood veto threats from this administration and insisted on significant funding increases for homeland security.

President Bush's own appointees have all but begged the President's OMB Director for additional funds to fight the war on terrorism here at home. Many of these requests are urgent and quite compelling, yet the OMB has continually rejected a surprising number of these pleas. It is as if this administration has delivered

an internal unfunded mandate to its own cabinet secretaries and Federal workers. Fight the war on terrorism on every front here in the homeland. Fight vigorously. Spare nothing, but make sure you do it on a shoestring. Protect our people here at home, but protect them on the cheap.

The Department of Energy proposed a total of $380 million to fund projects to enhance the security of radioactive materials here at home and overseas, including: better security measures to safeguard the transport of nuclear weapons within the United States; improvements in the ways in which we secure and store plutonium; cleaning up, transporting, and protecting low-level radioactive materials that could be used in a "dirty bomb."

For these and similar activities $380 million was asked for by the Secretary of Energy. But do you know what? That request fell on deaf ears at the Office of Management and Budget. Despite all of the worrying and nail biting about what would happen if some lunatic obtained radioactive material and detonated a "dirty bomb" on the mall in Washington or in some other large city, the OMB provided less than $27 million or about 7 percent of the Energy Department's request. Let me say that again: The OMB provided less than $27 million or about 7 percent of the Energy Department's request. This urgent supplemental bill contains $361 million for the Department to dedicate to securing these dangerous and vulnerable materials. That is $334 million above the amount requested by the President.

Another striking omission from the Bush supplemental request for homeland security involved efforts to deport those individuals who entered the country on visas that have now expired. Currently there are an estimated 8 million undocumented immigrants in the United States and only 2,000 interior immigration enforcement officers nationwide. This is a very dangerous situation. We know that terrorists live and plot their crimes among us. The Immigration and Naturalization Service requested $52 million for analysts to help find, arrest and deport high-risk individuals who have disregarded the departure dates on their visas.

OMB said no, nada, nix. It denied the entire request. The supplemental bill, now stuck in conference because of the administration's latest demands, contains $25 million that the Appropriations Committee believes the INS can usefully spend this year to address the need to locate some of these individuals. We also include $88 million for construction and equipping of border facilities, and for improved border inspections.

Last fall, OMB denied $1.5 billion in funding which the FBI requested in the wake of the attack on the twin towers in New York. Part of the FBI's funding request was for acceleration of a new computer system that will be at the heart of all communications within the bureau. Also included in the request were funds to enhance the internal security of the FBI's systems and procedures; for "cyber cops" and for hazardous materials personnel. The Congress provided $212 million above the President's request to permit completion of the new computer system much earlier than would be allowed under the Bush plan. In addition, we have included—the Appropriations Committee—$175 million for cyber security and

counter terrorism in the supplemental that the White House is now delaying—delayed at the last minute last Thursday evening.

I could go on, but suffice it to say that this administration talks a good game about homeland security but it is unwilling to put its money where its mouth is.

Over this past weekend, during his radio address, the President said that, "Strengthening our economy and protecting the homeland and fighting the war on terror are critical issues that demand prompt attention." I agree. I only wish that the same message would be made clear to the Office of Management and Budget.

We have worked diligently in the Congress to get these critical homeland security monies out to Federal and local personnel charged with protecting our people. Yet, we have been met by objection after objection by this administration.

In March, the President insisted he needed more money for national defense in an urgent supplemental. We gave him every dollar he requested. In addition, the House and Senate provided more money for critical homeland defense needs.

Instead of letting the House and Senate work out our differences and get the funding out, the White House started issuing veto threats before the Senate bill was even off of the floor. And last Thursday evening, just as all differences appeared to be worked out, the White House bomb throwers blew up the agreement with new demands.

It makes one wonder how much the White House really needs that defense money and it certainly causes one to wonder how serious this administration really is about homeland security.

Senator Stevens and I have beseeched the White House over and over again to have the Homeland Security Director come before our Committee to tell us about the needs for Homeland Security. Our requests were denied. We held days of hearings with administration officials, local firefighters, policemen, mayors and governors. We did our best and funded the needs as testimony we heard indicated.

We wrote a good bill, and we were ready to convene the conference Friday. But our efforts were blown up by the OMB Director, suddenly and completely and with no warning until the very last minute, Thursday evening.

So needs go wanting in our military and in our homeland defense effort. There is no excuse for such irresponsibility. Such tactics are not in the best interests of our people. Hollow rhetoric on homeland security will never replace solid funding for these needs.

Political gamesmanship over issues so critical to our Nation and our people is irresponsible, arrogant and totally out of line.

I deplore the arrogance with which the good faith efforts of both Houses of Congress have been treated by this White House. Apparently the security and safety of this Nation and its people have taken a back seat to gamesmanship by a White House that has no respect for the people's representatives or for the people's urgent needs.

Under OMB Director Mitch Daniels' stewardship, the Federal budget has gone from a surplus of $127 billion in FY 2001 to an estimated deficit for the current fiscal year of $165 billion. This is a swing of $292 billion in just one year.

The President is now threatening to veto the urgent national defense and homeland defense supplemental appropriations bill based on Mr. Daniels recommendation. Why? Because Mr. Daniels asserts that the bill spends too much money. Yet the conference report's spending levels that have been agreed to on a bipartisan and bicameral basis would increase the deficit by only about $600 million compared to the President's request.

Mr. Daniels believes that the critical port security, border security, firefighting, law enforcement, nuclear security and other homeland defense programs funded in the supplemental can wait because the bill would increase the deficit by about $600 million, when his failed fiscal policy has resulted in a $292 billion swing in the deficit.

The OMB Director seems to have forgotten, or perhaps never learned, that the appropriations process is about more than just numbers. Maybe at OMB, they can be bean counters, but here in Congress we are responsible for understanding what the numbers mean for the American people.

Mr. Daniels is cynically focused only on the bottom line. In an effort to make the supplemental bill look smaller, he has proposed rescinding the balance of funds under the airline loan guarantee program. He asserts that this would produce $1.1 billion of savings. Yet these funds under the law can not be spent. There are no real savings here. The Congressional Budget Office would not score savings for this proposal. This is the kind of phony accounting that is getting our Nation's corporations in trouble.

This phony accounting is proof that Mr. Daniels does not care about homeland defense or about our national defense, or about fiscal discipline. This phony accounting proves that the President's veto threat is only about proving that he can force the Congress to hit some arbitrary bottom line. And the unmitigated gall of a high White House official coming to the Congress with an accounting gimmick at a time when that same White House is decrying phony accounting practices and scandals in the business community is beyond belief.

We should not delay this conference one more day. There are some in Congress who suggest that we should throw our hands up on this bill and wait until the next fiscal year to address these priorities. Such statements ignore the critical needs facing the Nation for defense and homeland security. Our fighting men and women need this money to prosecute the war on terrorism. Dr. Dov Zakheim—the Defense Department comptroller—said in a briefing on Friday that the Defense Department is hitting a wall and that our people in uniform cannot be paid if the Supplemental Bill is not enacted by the August break. He said in that briefing that there is good will on Capitol Hill, and he is right. We are trying to do the right thing for our people here at home and our fighting men and women in the field. It is deplorable that good will, hard work, and good intentions can be trashed by OMB Director with reckless abandon. I do not think this President or this Nation are well-served by tactics and gamesmanship when the stakes are so high.

Mr. President, I ask unanimous consent that a memorandum be printed in the RECORD which sets forth the highlights of the $7.2 billion for homeland defense in conference funding levels.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HIGHLIGHTS OF $7.2 BILLION FOR HOMELAND DEFENSE IN CONFERENCE FUNDING LEVELS

The tentative conference funding levels are $1.9 billion above the President's request. A summary of the $1.9 billion increase with examples of changes to the President's homeland defense proposal follows:

$701 million for first responder programs, $343 million above the President's request, including:

$150 million for firefighters, with the funds going directly to the local firefighters. The President did not request supplemental funds despite the fact that over $3.0 billion in applications from 18,000 fire departments were received for the $360 million currently available.

$100 million for State and local governments for improving interoperability of communications equipment for fire, police and emergency medical technicians, none of which was requested. The funding flows through existing FEMA and Justice program, rather than the new, centralized program at FEMA, proposed by the President for FY 2003. In addition, we are directing the National Institute of Standards and Technology to take the lead in developing uniform standards for interoperable State and local law enforcement, firefighting and emergency medical communications equipment.

$151 million for the Justice Department, $151 million above the President's request to give to State and local governments for improved training and equipment for law enforcement personnel (rather than through FEMA). Funds would also be used to improve the processing of security clearances for State and local first responders so that State and local governments can have information on potential security risks and to promote mutual aid agreements to coordinate the response of State and local governments to a terrorist attack.

$193 million, $134 million below the request for FEMA grants to State and local governments to update their emergency operations plans and to improve State emergency operations centers. $25 million is approved for a new, unauthorized program requested by the President, $25 million below the request. The proposal establishes a Citizen Corps within FEMA to promote volunteer service for emergency preparedness.

$54 million, $22 million above the President's request for FEMA's search and rescue teams. Currently, there are 28 FEMA search and rescue teams around the country that can be deployed to major disasters to assist local first responders in search and rescue operations. Funding will be used to upgrade equipment and training for responding to events involving a biological, chemical or radiation attack.

$37.1 million of unrequested funding for the National Institute of Standards and Technology for developing uniform guidelines for chemical, biological and radiation detection equipment ($17.1 million) and for developing best practice guidance for homeland security technologies ($20 million).

$15.9 million for the Federal Law Enforcement Training Center to expand training capacity for law enforcement personnel of the new Transportation Security Administration.

$739 million for port security programs, $465 million above the President's request, including:

$125 million for port security grants through the Transportation Security Administration. Last Fall, Congress approved $93 million of unrequested funds for port security grants. DOT received $692 million of applications for the $93 million we provided. Despite this, the President did not request additional funds.

$528 million for the Coast Guard for port and maritime security, $273 million above the President's request. Increased funds would be used to: expedite vulnerability assessments at our Nation's ports, rather than follow the Administration's current plan to do the assessments over the next five years; add two new maritime safety and security teams; purchase a total of six homeland security response boats; and expand aviation assets as well as the shore facilities to support them.

$39 million for Customs to target and inspect suspect shipping containers at overseas ports before they reach U.S. ports. The Administration requested no funds for this activity.

$19.3 million, as requested for 34 additional personnel for improved background checks for truck drivers, for improved fraud detection for truck licensing and for improved fraud detection for driver's licenses.

$28 million of unrequested funding for the Safe Commerce program to develop better procedures for securing the contents of the 6 million containers that enter U.S. ports each year.

$251 million for bioterrorism funding, $251 million above the President's request, including:

$251 million for the Centers for Disease Control for improved and secure facilities, including toxicology and infectious disease labs, an emergency operations center and for information technology security.

$235 million, $209 million above the President's request to improve security at our nuclear weapons facilities (Energy requested the funds, but the White House did not request them). Funding would be used to improve security of the nuclear weapons stockpile, the national nuclear labs and our nuclear weapons plants. Funds are included to establish a 911 system for local first responders to call when confronted with nuclear hazzards, enhanced funding for the National Center for Combating Terrorism, expansion of radiological search teams, and establishment of a National Capital Area Response Team at Andrews Air Force Base. Funds would also be used to consolidate nuclear materials sites so fewer locations need to be protected. Several requested items that are approved include funds to improve security on the electrical grid and funds to improve our capability to detect radiation.

$147 million, $128 million above the President's request for cyber security to help deal with the threat to Federal and private information systems. $82.6 million is provided to Justice to improve the investigation and prosecution of cyber crime, research to improve the detection of cyber crime, "data warehousing" and "data mining" to help expose cyber crime and for information sharing. $20 million is provided to Commerce to develop unified Federal guidelines and procedures for system security certification and to develop guidelines and benchmarks for secure information systems. Funding is also provided to improve wireless intrusion detection systems. $25 million is provided to the Energy Department to improve cyber security at our nuclear weapons plants and labs. $19.3 million, as requested, is included for NSF for scholarships to develop cyber security skills.

$120 million for border security, $78 million more than requested by the President, including $32 million for Immigration and Naturalization Service Construction to improve facilities on our Nation's borders, $25 million for better equipment for the additional personnel that are being hired with the funds Congress provided at Fall and $5.7 million for the Justice Department to deploy to 30 more ports the IDENT/IAFIS system for rapid response criminal background checks by the INS of suspect aliens prior to their admission into the country. $57 million for INS for identifying and removing immigration felons from the country and for information technology enhancements.

$140 million of unrequested funding for the Department of Agriculture to enhance our Nation's food safety capabilities and to protect against devastating plant and animal disease; to increase support for the Food Safety and Inspection Service, especially to ensure the safety of imported products; for improved security at USDA labs in order to secure bio-hazardous materials; funding for the Extension Service to provide emergency training for first response in rural areas; for FDA to improve the ability to inspect imported products such as medical devices that contain or are susceptible to being contaminated with radiation; and for vulnerability assessments and security improvements to protect rural water systems.

471 million of unrequested funding for airport security, including $150 million to insure that all small and medium hub airports have all of the funds necessary to implement the FAA's new airport security guidelines and that large airports have some additional funding to meet those requirements; $225 million is provided above the President's request for explosives detection equipment; $42 million is provided to improve the security of the FAA air traffic control system; $17 million is provided to improve airport terminal security for our Nation's airports; and $7.5 million is provided to FAA to repair long range radar systems that the Department of Defense believe must be continued for several years because these assets are the only FAA radar capable of continually tracking aircraft with disabled transponders. In addition, $15 million is provided for improved air to ground communications for the air marshals, $4 million for radiation detection equipment for air cargo and $10 million is included for improved technology for air cargo safety and other cargo modes.

$100 million for unrequested nuclear non-proliferation programs. The best opportunity to stop a potential "dirty" bomb is to minimize the opportunity for terrorists to get their hands on nuclear material. Funds are included to protect fissile material

abroad, purchase radiation detectors and to establish international standards for securing fissile material.

$108 million of unrequested funding for the Corps of Engineers to improve security at Corps water projects.

$92 million, $82 million above the President's request for the FBI for counter terrorism and information technology enhancements. In total, FBI receives $175 million when cyber security funding is included.

$50 million of unrequested funds for EPA to provide funds to local governments to conduct vulnerability assessments on our drinking water systems.

Examples of the remaining $273 million, most of which was unrequested include: $12 million for security at the Smithsonian; $17.7 million for the National Park Service for installation of bollards at the Jefferson Memorial and an in-ground retaining wall at the Washington Monument (requested by the President in FY 2003); $26 million for the U.S. Geological Survey for high resolution mapping and imagery of the Nation's major cities for use in developing vulnerability assessments of infrastructure and for expanded data storage capacity; $28.5 million to expand Secret Service capacity to combat electronic crimes; $23.6 million for the Legislative branch for Capitol Police and for the Library of Congress to cover part of the lost copyright fees from the slowed mail and for costs associated with cleaning up the Hart building after the anthrax attack; $19 million to improve response capacity to chemical attacks and for research on the impact of the release of toxic substances at the World Trade Center; $15 million for improved bus safety; $7.2 million for NOAA to develop back-up capacity for the supercomputers that support our weather forecasting system; $17 million for security and renovations of the Federal courts, $3 million above the request; and $44 million for the District of Columbia and the Washington Metro to improve security; consistent with the congressionally-mandated District emergency operations plan and FEMA's emergency plan for the National Capital Region, and to construct decontamination and quarantine facilities at Children's Hospital and the Washington Hospital Center.

The conference funding levels include $4.1 billion for the new Transportation Security Administration, $331 million below the request ($439 million of which is for unrequested items highlighted under port security and airport security).

The conference funding levels also include the $87 million President's Budget request for the Postal Service to improve protection of postal customers and postal employees from a bioterrorist attack, the $52 million President's Budget request for improved security of Federal buildings and $3.8 million for the Office of Homeland Security, $1.2 million below the President's request.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I yield 10 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank the chairman of the committee. Let me begin by stating that which I have said on several occasions: We are all deeply indebted to the Senator from Maryland for the tremendous work he has done as the chairman of the Banking Committee in fashioning this legislation. He has worked with many of us to put this bill together. My guess is that, within an hour or so, we will overwhelmingly pass this bill before us. The chairman will be largely responsible for the result.

I also commend my colleague from Wyoming, Senator Enzi, and others who have worked very hard and have made it a bipartisan bill. Without his leadership, I don't think that would have happened. We may have had a partisan vote coming out of committee. That would not have bode well for the handling of this matter on the floor. So I commend him and others for reaching an accommodation that made this a strong, good bill.

Mr. President, I want to take a few minutes toward the close of this debate to urge our colleagues to be supportive of this bill, and

I hope Members of the other body will support what we have done in the Senate.

The House passed legislation a number of weeks ago, prior to a lot of the events that have unfolded over the last 2 or 3 weeks. The argument today for a stronger Senate bill hardly needs to be made in light of events that occurred over the past number of days. Just today, the Dow is down some 40 points; Nasdaq is even. But over the last week, we have seen a continued decline in investor confidence and, of course, how that is reflected in the stock markets.

Investors, both domestic and foreign, are losing confidence in our financial markets. Investor trust is contagious. I also point out the corollary to that: Investor mistrust is also contagious. What we are watching is an erosion of trust that has begun and is almost impossible to stop once it gets rolling. Obviously, a lot of factors will contribute to stemming this tide of continued erosion of investor trust and confidence.

One of the things we can do is what we are doing today. Other people will have to add their voices to the debate. In my view, the President still has to be stronger than he has been. The House will have to rise to the occasion as we have endorsed in large measure what we have accomplished here, but our step, the first step, is the one we are taking this afternoon. Therefore, I think this is critically important.

This is not just another bill we are passing. This is far more important. In fact, the impact of how people react may be more important than the actual wording and language of the bill. It is critically important we have as strong a vote as possible.

If we fail to enact serious reforms—and this bill is serious reform—then I believe we endorse dangerous and discredited accounting practices that we have seen in the last 7 months alone cost shareholders and workers billions of dollars in their savings and pensions.

The Nasdaq has fallen over 37 percent, and the Dow has fallen 17 percent since the beginning of the year. Both Nasdaq and the Dow have dropped over 10 percent each in the past week alone. So Congress must act today, Mr. President, and act with a very strong voice to stem the rising tide of investor apprehension.

Passage of this bill will not and cannot of itself restore investor confidence. More must be done to win back consumer faith, but this bill is a critical piece of the overall effort and, therefore, it is essentially important we adopt it.

The part of the rationale of the original securities law in the 1930s was to increase public trust in America's financial markets and reliability of disclosed corporate financial information. Those laws over the past 70-plus years were a part of the modern economic foundation of our Nation, and they were designed to promote market efficiency and inspire investor confidence.

The resulting market confidence in the statements of financial health of publicly traded companies has paved the way for America's rise as an economic superpower.

I could make a strong case that the vote we are going to take today is for one of the most important bills impacting the Nation's financial markets since the 1930s. I say that because this legislation will fundamentally change the way publicly traded companies

will do business and how the accounting profession performs its statutorily required audit function.

Much has been said about what this legislation does not accomplish. Briefly, I wish to focus my remarks on what it does do and repeat, we are not solving every problem with this bill. There are a lot of other issues that need to be addressed, but we have to begin the process, it seems to me, by getting the accounting part of this equation right, and we will not know ultimately whether we have done all we could, but I think this is a major step in that direction.

The bill, we now know, creates a new independent regulator for the accounting profession. The new body will act as a strong, independent, full-time board with significant authority to regulate auditors of public companies. The independent board will have clear authority for setting auditor standards and important investigative standards. It strengthens audit reporting standards for the accounting profession and contains significant prohibitions for accountants performing nonaudit services for audit clients, and it addresses the growing conflicts of interest that have been too pervasive throughout the accounting profession.

It provides for the first time an independent funding source for the Financial Standards Accounting Board, which I think is also extremely important and one of the major reforms in this bill.

There are additional dollars to provide the SEC with more firepower, if you will, to have more cops on the street so we might avoid some of the problems that have occurred in the past.

It also improves corporate governance requirements and improves corporate disclosures. The bill grants additional authority and responsibility to the audit committees of publicly traded companies.

Those are very important steps. The provisions contained in the legislation were carefully considered. We had 10 hearings, and by a vote of 17 to 4, the committee—the Presiding Officer being one—passed out this very fine legislation.

Additionally, during floor consideration of this bill, Senator Leahy of Vermont added new criminal penalties for securities fraud. I commend him and strongly endorse the provision that won the overwhelming support of the Members. I hope it will add to our efforts of restoring investor confidence.

One of the last issues I would like to address, because it has been talked about so much, is the stock options issue, which involved a lot of debate and discussion of the last number of days. I commend our colleague from Michigan, Senator Levin, who has made an extraordinary effort to find a resolution to this issue we all can support. Obviously, this question inspires more questions than answers in many ways, but I commend him for his thoughtfulness and energy that he has brought to this debate.

The issue of whether or not stock options should be expensed is not an issue that is going to go away. It has to be addressed. I must admit, I am swayed by those who have a great deal of expertise in this area: Alan Greenspan, Warren Buffett, Paul Volcker, all of whom support the expensing of stock options.

I also recognize the danger when Congress begins the process of legislating accounting standards.

My friend from Texas and I have been involved in the past when there have been efforts by people who wanted to have us vote on some of these matters. I recall 3 or 4 years ago the debate was over pooling and purchasing accounting standards. I was very sympathetic to the arguments made by those advocating pooling. Certainly, if I were a member of FASB, I think I would have voted to allow that accounting standard to go forward, but the idea that the Senate might vote by 51 to 49 to pick one accounting standard over another is just ludicrous on its face. We do not want to set a precedent, in my view, of the Congress of the United States deciding what accounting practices ought to be. That is why we set up these boards to do the job.

The approach taken by having the Accounting Standards Board, the SEC, and others look at these matters and get back to us with their recommendations is the appropriate and proper way to go. Despite the temptation of others to want to legislate these matters explicitly on the floor, I remind my colleagues who have done that in the past, we inevitably regret doing it when we set precedents such as those and are only duplicated by other ideas that temporarily may be very popular, may be politically attractive, but may be terrible economics as well.

I applaud the effort to approach the stock option issue in the manner in which it has been addressed. I mentioned Senator Enzi. I mentioned my colleague from Texas as well. He and I worked many years on a lot of matters affecting the financial services sector of our economy. He does not have that many days left with us, and I am going to miss him. I told him that privately, and I tell him publicly that he is a valued Member of this institution. Whether we agree or disagree on matters he always brings a great deal of thought to the debate. He has been a fine member of the Banking Committee, and I have enjoyed my service with him for many years. I do not want to be too complimentary. I will reserve any final glowing accolades for when we have completed the process. We have a conference to go through yet.

Again, my compliments to Senator Sarbanes.

What we are doing is important. This is extremely important legislation. I said earlier it may be more important what message it is we are sending; that we are not sitting in the bleachers, we are not just standing by as these events unfold. All Members of this Chamber can take great pride that the Senate of the United States has responded with a responsible bill we think is going to make a difference. I yield the floor.

Mr. SARBANES. What is the time situation?

The PRESIDING OFFICER. The Senator from Maryland controls almost 14 minutes, and the Senator from Texas controls just under 12 minutes.

Mr. SARBANES. I yield 4 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 4 minutes.

Mrs. CARNAHAN. Mr. President, my amendment requires that when corporate insiders, such as CEOs, trade the stock of the companies they manage, they must take reasonable steps to disclose those transactions to their shareholders. Current law requires that insiders file disclosure forms with the Securities and Exchange

Commission. However, almost all of these forms are filed on paper and average investors have no practical way of seeing these disclosures. My amendment requires that these disclosure forms be filed electronically and that the SEC make these disclosures available to the public over the Internet.

This amendment also requires that corporations disclose insider transactions on their own Web sites. Investors have a right to know if corporate officers are dumping their stock. However, it is meaningless to require these disclosures if investors have no practical way of ever seeing these disclosures. Without this amendment, the disclosure forms simply sit in a file cabinet at the SEC in Washington. My amendment ensures that investors have access to this important information.

In the 3 years leading up to its bankruptcy, as Enron's top officers touted the company's stock, they sold more than $1.1 billion worth of their own holdings. Ken Lay alone sold more than $100 million worth of Enron stock while telling others to buy it. Enron's vice president of human resources, Cindy Olsen, was asked by employees if they should invest 100 percent of their retirement funds in Enron. She replied: "Absolutely." But within 3 months she personally unloaded $1 million worth of Enron stock. Had Enron employees only known, they might have been skeptical about this advice.

Investors are entitled to know how executives are acting with their own shares of their company's stock, and my amendment will ensure they will.

I yield my remaining time back to the Senator from Maryland.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield 8 minutes to Senator Enzi, and might I say on my time, not his 8 minutes, that I want to thank Senator Enzi for his contribution to this bill, for his work from beginning to end. He has been a major contributor to the bill. He has proven that knowledge sometimes is a nice thing to have.

Our standard in Washington for objectivity is that you came in off the turnip truck and you know absolutely nothing and therefore you are objective, but I would say that Senator Enzi proves that it is nice every once in awhile to have somebody who knows what he is talking about. I think in many ways, large and small, the good things in this bill he has had a very positive impact on and the bad things in the bill he could not do anything about anyway—that was a joke, I would say to the Senator from Maryland.

In any case, I do want to congratulate Senator Enzi for all the contributions he has made.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 8 minutes.

Mr. ENZI. I thank the Senator from Texas for his gracious comments.

It has been mentioned several times today that there is nervousness in the stock market. There has been since we started debating this issue. I am very convinced that some of that is because people may read some of the amendments that have been suggested and recognize the legislative principle that, if it is worth reacting to, it is worth overreacting to. That ought to be enough to scare anybody.

We have had extensive debate. In fact, one reporter I talked to asked me if we were going to pass the McCain bill. The reporter talked about the accounting reform, and I had to say, no, that is the Sarbanes bill we have been working on. It is not stock options, in spite of the threat we had the other day.

We usually do bills the way we have done this one—with a lot of cooperative talk. We then make arrangements to develop the best possible outcome. The accounting reform bill before us is designed in such a way that we set up processes that people with accountability and responsibility and knowledge have to oversee. This bill does not tell them exactly how to do the details of accounting. It gives a fair process for accountants to be able to do the details of accounting.

In past years, we have decided we knew more than the people who had the expertise in the area of accounting and we have given them direction on how to do it. We almost made that mistake again. For instance, the McCain amendment was very simplistic. In one paragraph it told people how to do accounting that may actually take about 500 pages to explain. It would have caused the most massive restatements in the history of the United States, and restatements right now make everybody nervous. People ought to realize that some restatements are caused by changes in rules, not by people doing things wrong. So investors should always review restatements and determine the actual cause. I certainly hope it is never Congress, but I suspect it very well could be.

Another proposal that was going to be put before us was one telling FASB, this Financial Accounting Standards Board, exactly what they were supposed to examine next and what they were supposed to resolve in the next year. I have to say, FASB is working on some important things because they have been examining what Congress has been debating and they know in greater detail than we do what caused the massive restatements. I have to say, I do not believe it was stock options. It was likely a number of other things that need to be investigated.

This Financial Accounting Standards Board is diligently looking at these issues. They are looking at some high-profile rules in the areas of accounting for intangibles and accounting for special purpose entities. We have talked a lot about special purpose entities, and our hearings showed that they may have been a cause for the Enron collapse. Also, they are looking at accounting for guarantees and examining a final rule on liabilities and equity. They are also studying whether to create a rule on revenue recognition.

Those five things probably put one to sleep, but they are important to have resolved to make sure we do not have problems with companies in the future. We have to be careful now and in the days to follow that we ensure we use all of FASB's expertise, knowledge, and staff to resolve high publicity problems of accounting.

In this bill, we have made the Financial Accounting Standards Board more independent. We have provided them with independent funding so they no longer must beg for donations and perhaps encounter a conflict of interest. Through this process, we should not insert ourselves and say we are going to tell them exactly what is important.

I would like to thank Senator Sarbanes and Senator Gramm for the extraordinary work they have put into the process. Last week was an extremely difficult week. I thank them for the careful work and review they have done on every single one of the amendments that has been submitted, and the process they established to make sure this bill would not get out of hand, that it would not be an overreaction, and that when we finish it tonight and we can reassure America it is still okay to invest in the stock market.

We are fortunate on the Banking Committee to have these two people I consider to be the finest public servants in Congress. They have worked long and hard to assure that the product that came out was bipartisan and reflected the views of as many Members as possible. I also thank the members of the staff who worked diligently on the bill.

From my own staff, Katherine McGuire, Kristi Sansonetti, and Michael Thompson. From Senator Gramm's staff, Wayne Abernathy, Linda Lord, Stacie Thomas, and Michele Jackson. And from Chairman Sarbanes' staff, Steve Harris, Steve Kroll, Dean Shahinian, Marty Gruenberg, and Lindsey Graham and Vince Meehan. All of these staffers have spent many late nights and weekends working to build this legislation.

This legislation is badly needed. The markets have been in a steady decline for several months now. While I do not believe it is Washington's job to step in every time the market is in a decline, I do believe that when markets move as a reaction to illegal or unethical acts, then we have obviously not made penalties severe enough to dissuade this type of behavior. Congress had to act in this climate.

However, I would also like to comment on a few things happening outside of the real debate—namely the attacks on SEC Chairman Harvey Pitt. I have to say that Chairman Pitt and I may not always agree, but I believe the recent attacks on him to be unwarranted. Mr. Pitt has come under fire for having represented some of the accounting firms who have been criticized in recent restatements. I believe Chairman Pitt's work in the private sector is a great asset to investors. We need individuals who are willing to work in government who know and understand the industries they regulate. I do not want lifelong government bureaucrats monitoring these companies.

These restatements did not all of a sudden appear when Chairman Pitt was confirmed. In most cases, they begun during the late 1990s when companies became intent on not seeing the Internet bubble burst. I have to ask what was going on at the SEC while these companies were filling all of these false financial statements? What I imagine happened was that the companies, who are very familiar with who is at the Commission and where the resources are being devoted, thought they could take advantage of the situation because no one was paying attention.

Look at what has happened since Chairman Pitt has taken office. He has opened a record number of investigations of restatements filed by public companies. He has taken steps to break the relationship between research analysts and investment bankers. He has supported legislation that will increase penalties on corporate executives engaged in fraudulent behavior. And, he has indicated his

support of this legislation, which by the way, I anticipate to be supported by the majority of the Senate later today.

The numbers are clear. In Chairman Levitt's last year as Chairman, 503 total enforcement actions were filed. Already this year, Chairman Pitt has filed 415. Officer and Director Bars for 2000 were 38—this year so far 71. Subpoenaed enforcement proceedings in 2000 were 9—this year 18. The numbers go on and on. My point is that Chairman Pitt seems to be left cleaning up the mess his predecessor left in corporate America.

I offer my support for these actions taken by Chairman Pitt. Instead of attacking him, I am more concerned about what was happening at the SEC that bred this climate where executives felt compelled to engage in this unethical behavior. Why weren't some of these actions taken three or four years ago? Did the SEC Chairman not see the potential conflicts that could arise out of research analysts getting compensation based on investment banking business?

Therefore, I would say that I commend Chairman Pitt for the work he is doing. From what I understand, the actions he is taking at the SEC have struck fear throughout the corporate community that they had better get their act together.

This legislation before us now will also go far in restoring faith in the markets. It will provide assurances to investors that we will not sit by and watch executives shatter the retirement dreams of workers while leaving themselves with millions of dollars. It will show the American people that we will work to make financial statements transparent and accurate to make sure they know as much about the company's financial state as possible.

The legislation builds an accounting oversight board to oversee the accountants who prepare financial statements of public companies. This board will have broad authority to enforce and discipline rules by which accountants must live. The board will have full access to accounting firms' records and policies to require uniformity throughout the industry when it comes to ethics and independence. Accountants must know that someone is watching over them to require that their work is in the best interest of investors. This legislation will also provide for the SEC to have the resources they need to enforce the law.

However, I also do not want this legislation to provide a payday for the trial lawyers. The competitiveness of the accounting industry is at stake and we can ill afford to lose another firm solely because we didn't offer proper protections in this legislation. I am in no way indicating that accounting firms should have new, special protections. The only thing I am asking is that accounting firms aren't exposed to more liability after this bill is enacted than they were before.

I am not sure some Members truly understand the situation facing accounting firms. We are down to the final four firms. These are the only firms that have the expertise and resources to audit companies such as Microsoft, Coca Cola, and the thousands of other large companies. If we subject them to the will of the trial bar, it will only be a matter of time before we lose the rest of the firms one by one.

I know that, given what has happened recently with the restatements, it is easy to be critical of accountants and easy to legislate them. I agree we do need legislation, but what also needs to be understood is that overlegislating could be drastic to the economy. In the long run, if we overlegislate, it could be detrimental for the future of capital formation in this country.

Once again, I thank the Chairman for all of the work he and his staff have done with this legislation. I think it is a good bill, and I do intend to support it. I also think it will continue to improve through the Conference process and when all is said and done, investors will respond positively to passage of this legislation.

I wish to speak about the Financial Accounting Standards Boards, known as FASB, which has been referenced many times throughout the course of discussion on the underlying accounting bill, the Public Company Accounting Reform and Investor Protection Act of 2002.

Some of the pending amendments have referenced FASB and directed or mandated it to change how companies must expense stock options or to perform a study on how to expense stock options. In addition, the McCain amendment sets the accounting standard for expensing stock options, without allowing FASB to set rules on this form of expensing. The Levin amendment mandates FASB conduct a one-year study on expensing stock options, and then adopt a rule based on a narrow set of external parameters. The Levin amendment implicates a desire to have such expensing done.

In order to understand some of the problems with these types of amendments, it is important to understand exactly what FASB does. Since 1973, FASB has been the designated organization in the private sector for establishing standard of financial accounting and reporting. In short, those standards govern the preparation of all financial reports.

The mission of FASB is "to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information."

To accomplish this mission, FASB acts to improve the usefulness of financial reporting; keep standards current to reflect changes in the methods of doing business and the economic environment; consider any significant areas of deficiency in financial reporting; promote the international convergence of accounting standards together with improving the quality of financial reporting; and improve the common understanding of the nature and purposes of information contained in financial reports.

FASB follows certain precepts in its activities. One is to be objective in its decision making. Another is to carefully weigh the views of its constituents in developing concepts and standards. But its ultimate determination must be the Board's, based on research, public input and careful deliberation. It also aspires to promulgate standards only when the expected benefits exceed the perceived costs.

Overall, FASB was created to serve as an independent agency with an independent agenda. However, FASB is currently funded by companies and accounting firms. The long standing concern was that FASB did not act wholly independently, and succumbed to in-

dustry pressures in order to get the funding it needed to operate. Back in 1993 and 1994, when expensing of stock options was an issue, some critics say FASB succumbed to pressure by industry and Congress when it created a dual method of either expensing stock options at the time of grant, or placing the information in a footnote as a form of public disclosure of possible stock dilution.

The underlying accounting reform bill fixes this perceived problem of independence and autonomy by providing FASB with funding from both issuers and the accounting firms. Because of this change, FASB will be completely independent from the very companies it will set standards for in the future. This is a good start.

It is also important to understand that, historically, FASB has never been directed by Congress through legislation to adopt one particular standard for accounting, including expense accounting. It has also never been directed by Congress to perform a study. FASB's role is not to perform studies for Congress and they should not be bogged down performing them for political purposes.

Following that precedent, the Senate Banking Committee made certain nothing in the bill directs FASB to take any particular action. In other words, there is no Federal mandate to FASB, nor should there be, if it is to remain an independent authority. In addition, why should Congress, a body without expertise in accounting standards for publically traded companies, set these standards?

I, and many other members, as well as Federal Reserve Chairman, Alan Greenspan, believe that Congress has no business setting accounting standards. Instead, the Securities and Exchange Commission and FASB are the entities with the expertise needed to make these types of determinations.

Ordinarily, FASB establishes plans with milestones it works towards. Congress should not dictate what plans and milestones it should work towards or address. FASB also never sets artificial deadlines on when to reach a conclusion. As an independent agency, it carefully and deliberately makes its determinations and sets rules, without adhering to outside pressures or timetables. Just as Congress should not set accounting standards for FASB to follow, it also should not set artificial deadlines for FASB to adhere to either.

Nevertheless, some members have filed amendments asking FASB to not only take a specific action, but instructing it as to a specific timetable. One amendment actually sets an accounting standard, thereby instructing FASB to immediately change expensing standards. Another mandates FASB complete an expensing study within a year. These amendment set unrealistic timetables and mandates.

It is important to remember that FASB already has its hands full with important projects to help improve financial standards and reporting. It is currently working towards promulgating high profile rules in the areas of accounting for intangibles; accounting for special purpose entities; accounting for guarantees; and a final rule on liabilities and equity. FASB has also added to its agenda a project to research and create a rule on revenue recognition.

Let us not forget that the improper use of special purpose entities played a role in the downfall of Enron. Stock options had nothing to do with Enron's bankruptcy.

The projects FASB is concentrating on are important projects which will help clarify financial statements for investors. FASB itself needs to cue up and prioritize its projects based on what is more important to financial accounting and reporting. Congress should not dictate what those priorities should be or the timetable it must adhere to.

If some of the amendments we are looking at are accepted, Congress will establish a bad precedent of setting up a timetable and prioritizing projects for FASB. Congress will be putting stock option expensing—an accounting standard which did not cause the collapse of Enron or the demise of other big companies—at the front of the cue.

And another question we need to ask ourselves is whether FASB has the manpower to perform the mandates and timetables Congress would be providing through the McCain and Levin amendments. Already, FASB is shifting its personnel to different projects to try to timely promulgate needed rules. While the underlying accounting bill will help these staffing problems by providing independent funding, in the short term, FASB cannot possibly perform the mandates of some of the amendments within the time frames given.

I hope I have given members some solid reasoning on why Congress should not begin setting accounting standards. Should we really be doing something we do not fully understand? There are already agencies to perform this type of rulemaking, and they are the SEC and FASB. They are fully aware of the debate surrounding stock options. We don't need to mandate FASB to make a new rule. I am certain if FASB deems it appropriate, it will be looking at this issue in the future.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, I yield 4 minutes to the junior Senator from North Dakota.

Mr. DORGAN. Mr. President, in the final moments, I hope again to persuade my colleagues to accept by unanimous consent my amendment dealing with corporate bankruptcy. Let me again say what this amendment is.

It says that during the 12 months preceding a bankruptcy, CEOs who have received stock options, bonuses and other performance-based payments shall not be able to keep that kind of compensation. If they ride a company down to bankruptcy, they know the inside details of that company and got incentive-based compensation, including stock options, they ought not ride off in the sunset with a pocketful of gold while the employees and investors lose everything they have. That is not the right thing. A bankruptcy disgorgement proposal ought to be part of this bill. Everyone in this Chamber knows it should be part of this bill. Former SEC Chairman Breeden, a Republican, says it ought to be in this bill. I quoted other CEOs who say it should. Pass this bill without it and this bill is incomplete.

My colleague said he thought maybe the market, which has been so volatile recently, has been frightened by amendments that have been considered by Congress. I don't think so. I think the market has been volatile, up and down like a yo-yo, because we have story after story on the news in this country about financial crooks.

These are crooks who have cooked the books of their corporations, cheated investors, pulled the rug out from under their employees, and ruined some good companies. They did it in broad daylight, under the nose of their accounting firms and law firms.

It seems to me those CEOs who made millions, in some cases over $100 million prior to bankruptcy, ought to give that money back. That money ought to go to help those who lost their life savings and those who lost their jobs.

We have in this bill a provision that says if there is a restatement of earnings, you have to give back some of these incentive-based compensation packages. However, the bill is silent on the issue of bankruptcy. What about top executives who ride their company right into the ground and run off with $50 million in their pockets and leave everyone else flat on their back? How about asking those executives to disgorge themselves of their ill-gotten gains? How about telling them in this legislation that they must give that money back? That is what my amendment would do.

I want to talk about the SEC, but I don't have time at the moment. I will save that for another day.

This process has been a travesty of the Senate, in my judgment, having someone as a gatekeeper and preventing us from bringing up germane amendments. It does not make sense. That is not the way the Senate is supposed to work.

I ask unanimous consent to lay aside the Edwards and Carnahan amendments so I may offer amendment 4214 on bankruptcy disgorgement.

Mr. GRAMM. I object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. How much time remains?

The PRESIDING OFFICER. Forty seconds.

Mr. DORGAN. Mr. President, this is, of course, the last chapter on amendments, and a pretty sad book. I know people will go up to the gallery—and I understand someone is at a press conference from the other side—claiming credit for this bill. I want to know who wants to run up to the press conference and claim credit for preventing an amendment that says you must disgorge ill-gotten gains, incentive-based compensation, if you ran a company into bankruptcy. I want somebody to go to the press gallery and take credit for blocking that kind of legislation. Tomorrow I want to read about it. Who takes credit? Someone ought to take credit for blocking an amendment that ought to be passed in the Senate by a 100 to zero vote.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I will not get into a debate with the Senator. There is nothing ill-gotten in this amendment. This amendment does not belong in this bill.

We have a provision in this bill. If you violate the law, then you have to give back what you have earned from the company in terms of any kind of incentive in bonus.

But to say that people who work for a company that goes bankrupt has to give back compensation is to guarantee that a company that is in trouble would never get anybody to go to work for them. They would never have an opportunity to be saved. That amendment does not belong in this bill. It makes no sense in the logic.

Mr. DORGAN. Will the Senator yield?

Mr. GRAMM. I will not yield.

If you did something wrong, making you give back what you earned belongs in this bill. And it is in this bill. Not only belongs, it is here.

But to simply say because somebody worked for a company that goes broke, that they have to give back compensation, that sounds great in the environment we are in, but, look, I have a company, we are in deep trouble, and we try to go out and hire a top-notch person to come in and save us, and we pay him a compensation to try to do it. To say we will take it back if he fails, as if that is an ill-gotten gain, I am sorry, I don't think that is good economic policy. I don't think it is smart. It has nothing to do with the provisions of this bill.

Mr. DORGAN. Mr. President, perhaps the Senator from Texas would like a explanation.

Mr. SARBANES. I yield 1 minute.

Mr. DORGAN. I deeply appreciate the Senator from Maryland yielding.

What the Senator from Texas misses is we are talking about incentive-based compensation. Should someone who gets incentives for running the corporation into bankruptcy be able to keep that? I don't think so for somebody that gets a big bonus while he runs the company into bankruptcy, or for someone that gets big stock options while she runs the company into bankruptcy.

The Senator tried to win a debate we were not having. He says we will take compensation away from someone who is engaged in working for a corporation that went into bankruptcy. No, this is about incentive-based compensation and profits. It is not about taking away their salary. It is about saying if you are paid on an incentive basis and you are running that corporation into bankruptcy, you ought not to be getting the bonus. If you did, you ought to give it back. You ought not get stock options; if you did, you ought to give it back.

This is simply about something my friend has missed. It is about incentive-compensation and the fact that you ought not walk out of a corporation you ran into bankruptcy with a pocketful of gold while you left the employees and the investors flat on their back. This is not an amendment that is hard to understand.

I regret very much it has been blocked. I regret especially we were not allowed to vote on this amendment. That is the travesty, in my judgment.

Mr. GRAMM. Mr. President, I think you could debate whether the amendment is understood or not. I think I understand it perfectly. In fact, there are people in this country who are turnaround specialists, who are hired to try to save companies. If somebody did something wrong, if they violated the law, then make them give back compensation. You put them to death, if you want to put them to death. But to simply say, if you hire somebody with an incentive package to save the company, and the company goes broke, that you are going to take it back, that is up to the bankruptcy court to decide.

So this ill-gotten gain business is good rhetoric, but it has absolutely nothing to do with this amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Just 29 seconds remain to the Senator from Texas, and 5½ minutes remain to the Senator from Maryland.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 5 minutes remaining, the Senator from Texas has 30 seconds.

Mr. GRAMM. Mr. President, the Senator from Maryland should have the right to end the debate.

I think we have two bills: One in the Senate, one in the House. We can come up with a better bill than either. I think America will survive under either bill. Given the environment we are in, that represents some achievement, and I am proud of it.

I think we will come out of conference with a better bill than the House bill and a better bill than the Senate bill. I think people will be proud of what we did.

If I were an investor today, and I had a lot of money, I would invest in the stock market today.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Maryland has 4 minutes 45 seconds remaining.

Mr. SARBANES. Mr. President, we have been trying to clear amendments. We have yesterday—not yesterday, but on Friday we adopted three amendments on the basis of a unanimous consent request. We have worked through two additional amendments. I am going to offer them now.

One is an amendment by Senator Shelby for a study with respect to aider and abettor violations of the Federal securities law. I ask unanimous consent that the pending amendment be set aside; that the Shelby amendment, No. 4261, be called up and modified with a modification that I send to the desk; that the amendment as modified be agreed to; and then we then return to the regular order which, as I understand it, would be the Edwards as modified by the Carnahan amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 4261, AS MODIFIED

Mr. SARBANES. I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maryland (Mr. Sarbanes) for Mr. Shelby, proposes an amendment numbered 4261, as modified.

The amendment is as follow:

(Purpose: To require the SEC to conduct a study and submit a report to the Congress on aider and abettor violations of the Federal securities laws)

On page 108 after line 15, insert the following:

"(c)(1) The Commission shall conduct a study to determine based upon information for the period from January 1, 1998 to December 31, 2001—

"(A) the number of "securities professionals," which term shall mean public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

"(i) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (hereinafter

collectively referred to as "Federal securities laws"), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such actions or proceedings (referred to hereinafter as "aiders and abettors") and

"(ii) who have been found to have been primary violators of the Federal securities laws;

"(B) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

"(i) the specific provisions of the Federal securities laws violated;

"(ii) the specific sanctions and penalties imposed upon, such aiders and abetters and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

"(iii) the occurrence of multiple violations by the same person or persons either as an aider or abetter or as a primary violator; and

"(iv) whether as to each such violator disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

"(C) the amount of disgorgement, restitution or any other fines or payments the Commission has (i) assessed upon and (ii) collected from aiders and abetters and from primary violators.

"(2) A report based upon the study conducted pursuant to subsection (c)(1) shall be submitted to the Senate Committee on Banking, Housing, and Urban Affairs no later than six months after the date of enactment of the "Public Company Accounting Reform and Investor Protection Act of 2002.".

Page 78 strike lines 15-24 and insert the following:

In supervising non-registered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

The PRESIDING OFFICER. Without objection, the amendment as modified is agreed to.

The amendment (No. 4261), as modified, was agreed to.

Mr. SARBANES. Was the Ensign amendment also on that amendment?

I urge the adoption of the amendments.

The PRESIDING OFFICER. The amendments have been agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, in the regular order we are back with the Edwards and Carnahan amendments pending?

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. I have a couple of minutes?

The PRESIDING OFFICER. There remains 1 minute.

Mr. SARBANES. Mr. President, I think the Senate is about to take a major step to contributing to the restoration of investor confidence.

This legislation establishes a strong independent board to oversee auditors of the public companies. The board can set standards, investigate, and discipline accountants. It will be overseen by the SEC, but it will have independent funding and membership. I think this marks the end of weak self-regulation with respect to public company auditors.

It addresses pervasive conflicts of interest by ensuring auditor independence by restricting them from providing a defined list of consulting services. Other consulting services on the part of the

auditor can be permitted if preapproved by the company's audit company.

This legislation strengthens corporate responsibility. It establishes safeguards to protect investment/analyst conflicts, and it gives the SEC expanded staff resources so it has the resources to carry out its mandate of protecting investors in this critical time.

It is no exaggeration to say the crisis in our markets has put the plans and hopes and dreams of millions of Americans at risk. To restore market integrity on which investor confidence depends, we should move expeditiously to move this legislation into law.

I want to express my deep appreciation to my colleagues with whom we have worked for many weeks: To Senator Gramm, the ranking member of the committee with whom we interact in an interesting and, on occasions, exciting fashion; to Senator Enzi, who made a major contribution; to Senators Dodd and Corzine on our side of the aisle who played an essential role and introduced vital legislation on this issue very early on; to Senator Durbin who also introduced significant legislation on this subject, and to many other colleagues; and to Senator Reid, who has been extraordinarily helpful here on the floor of the U.S. Senate.

Mr. REID. Mr. President, I ask unanimous consent the 1 minute Senator Carnahan has—she is not going to be using it—that it be given to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland has an additional minute.

Mr. SARBANES. Mr. President, we don't do this work by ourselves. We all know that very well. We rely very heavily on dedicated, absolutely dedicated staff members. I am going to take the closing time I have to simply read their names into the RECORD: Dean Shahinian, Steve Kroll, Lynsey Graham, Vincent Meehan, Sarah Kline, Judy Keenan, Jesse Jacobs, Aaron Klein, Marty Gruenberg and Steve Harris of the Banking Committee staff; Wayne Abernathy and Linda Lord of Senator Gramm's staff on the committee. There has also been the staff of the individual Members.

I particularly want to acknowledge Mike Thompson and Katherine McGuire of Senator Enzi's staff, and Alex Sternhell and Naomi Camper, Jon Berger, Jimmy Williams, Catherine Cruz Wojtasik, Leslie Wooley, Margaret Simmons, Matt Young, Roger Hollingsworth and Matt Pippin.

I express my very deep appreciation. The dedication these staff members demonstrated over the last few months was just extraordinary: Long nights, weekends, day in and day out. I hope very much they will take a measure of satisfaction in the sense that they have made a very important and significant contribution to better public policy in this country.

I yield the floor.

VOTE ON AMENDMENT NO. 4286

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 4286. The yeas and nays have been ordered. The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. Craig), the Senator from Idaho (Mr. Crapo), and the Senator from North Carolina (Mr. Helms) are necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 174 Leg.]

Yeas—97: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voinovich, Warner, Wellstone, Wyden

Not Voting—3: Craig, Crapo, Helms

The amendment (No. 4286) was agreed to.

Mr. DASCHLE. I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mrs. LINCOLN). The majority leader.

Mr. DASCHLE. Madam President, under an earlier agreement, the next four votes will all be 10-minute votes. I urge Senators to stay in the well. We are going to cut it off at 10 minutes. If you are not here in 10 minutes, you have lost the opportunity to vote. I urge Members to move forward, and we will take on the next vote.

VOTE ON AMENDMENT NO. 4187, AS MODIFIED, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4187, as modified, as amended.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. Crapo), the Senator from Idaho (Mr. Craig), and the Senator from North Carolina (Mr. Helms) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 175 Leg.]

Yeas—97: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voinovich, Warner, Wellstone, Wyden

Not Voting—3: Craig, Crapo, Helms

The amendment (No. 4187), as modified, as amended, was agreed to.

Mr. SARBANES. Madam President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall it pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. Crapo), the Senator from Idaho (Mr. Craig), and the Senator from North Carolina (Mr. Helms) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "yea".

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 176 Leg.]

Yeas—97: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voinovich, Warner, Wellstone, Wyden

Not Voting—3: Craig, Crapo, Helms

The bill (S. 2673), as amended, was passed.

Mr. SARBANES. Madam President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Banking Committee is discharged from further consideration of H.R. 3763, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause will be stricken and the text of S. 2673, as passed, is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 3763), as amended, was passed, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Company Accounting Reform and Investor Protection Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term "appropriate State regulatory authority" means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) AUDIT REPORT.—The term "audit report" means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term "Board" means the Public Company Accounting Oversight Board established under section 101.

(6) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(7) ISSUER.—The term "issuer" means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports pursu-

ant to section 15(d) of that Act (15 U.S.C. 78o(d)), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) on or before the end of such fiscal year.

(8) NON-AUDIT SERVICES.—The term "non-audit services" means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms "person associated with a public accounting firm" (or with a "registered public accounting firm") and "associated person of a public accounting firm" (or of a "registered public accounting firm") mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term "security" has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term "securities laws" means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting "the Public Company Accounting Reform and Investor Protection Act of 2002," before "the Public".

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended

(A) in subsection (a)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,";

(B) in subsection (d)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,";

(C) in subsection (e), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,"; and

(D) in subsection (f), by inserting "or the Public Company Accounting Oversight Board" after "self-regulatory organization" each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by inserting "registered public accounting firm (as defined in section 2 of the Public Company Accounting Reform and Investor Protection Act of 2002)," after "government securities dealer,".

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;
(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;
(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;
(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and
(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.
(3) CONSENTS.—Each application for registration under this subsection shall include—
(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and
(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.
(c) ACTION ON APPLICATIONS.—
(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.
(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).
(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).
(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.
(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—
"(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.
(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—
(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe the scope of the auditor's testing of the system of internal accounting controls of the issuer required by section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such system of internal accounting controls—

(aa) complies with the requirements of that section 13(b)(2); and

(bb) provides reasonable assurance that receipts and expenditures of the issuer comply with applicable law, and are being made in accordance with proper authorizations of the management and directors of the issuer; and

(III) a description of significant defects in such internal controls, and of any material noncompliance, of which the auditor should know on the basis of such testing; and

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) INDEPENDENCE STANDARDS AND RULES.—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

(1) IN GENERAL.—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) EVALUATION OF STANDARD SETTING PROCESS.—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take appropriate disciplinary action, if any, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information

as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) REFERRAL.—The Board may refer an investigation under this section—

(A) to the Commission;

(B) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(C) at the direction of the Commission, to—

(i) the Attorney General of the United States;

(ii) the attorney general of 1 or more States; and

(iii) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—All information referred to in subparagraph (A) may, in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, be made available to the Commission, the Attorney General of the United States, to the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator, to State attorneys general in connection with any criminal investigation, and to any appropriate State regulatory authority, which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as

a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act.

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase "consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization" in section 19(b)(2) of that Act shall be deemed to read "consistent with the requirements of title I of the Public Company Accounting Reform and Investor Protection Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

(B) the phrase "otherwise in furtherance of the purposes of this title" in section 19(b)(3)(C) of that Act shall be deemed to read "otherwise in furtherance of the purposes of title I of the Public Company Accounting Reform and Investor Protection Act of 2002".

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 19(c), except that the phrase "to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title" in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read "to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Public Company Accounting Reform and Investor Protection Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this title" in that section 19(e)(1) shall be deemed to read "consistent with the purposes of this title and title I of the Public Company Accounting Reform and Investor Protection Act of 2002";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b) RECOGNITION OF ACCOUNTING STANDARDS.—

"(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body—

"(A) that—

"(i) is organized as a private entity;

"(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

"(iii) is funded as provided in section 109 of the Public Company Accounting Reform and Investor Protection Act of 2002;

"(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices;

"(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

"(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

"(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.".

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains. The budget of the Board shall be subject to approval by the Commission.

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e).

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (h), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (f), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (f), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(g) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting the following: "; and

"(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Public Company Accounting Reform and Investor Protection Act of 2002.".

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1) is amended by adding at the end the following:

"(g) PROHIBITED ACTIVITIES.—It shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Public Company Accounting Reform and Investor Protection Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

"(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

"(2) financial information systems design and implementation;

"(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

"(4) actuarial services;

"(5) internal audit outsourcing services;

"(6) management functions or human resources;

"(7) broker or dealer, investment adviser, or investment banking services;

"(8) legal services and expert services unrelated to the audit; and

"(9) any other service that the Board determines, by regulation, is impermissible.

"(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).".

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(i) PREAPPROVAL REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

"(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

"(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor;

"(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

"(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved by the audit committee prior to the completion of the audit, by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

"(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

"(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

"(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.".

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead audit partner (having primary responsibility for the audit) or the audit partner responsible for reviewing the audit that is assigned to perform those audit services has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.".

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

"(1) all critical accounting policies and practices to be used;

"(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

"(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.".

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(58) AUDIT COMMITTEE.—The term 'audit committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

"(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

"(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 3 of the Public Company Accounting Reform and Investor Protection Act of 2002.".

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1) is amended—

(1) by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm";

(2) by striking "the independent public accountant" each place that term appears and inserting "the registered public accounting firm";

(3) in subsection (c), by striking "No independent public accountant" and inserting "No registered public accounting firm"; and

(4) in subsection (b)—

(A) by striking "the accountant" each place that term appears and inserting "the firm";

(B) by striking "such accountant" each place that term appears and inserting "such firm"; and

(C) in paragraph (4), by striking "the accountant's report" and inserting "the report of the firm".

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking "independent public accountants" each place that term appears and inserting "a registered public accounting firm"; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm".

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking "Definition" and inserting "Definitions"; and

(2) by adding at the end the following: "As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of this title on or before the end of such fiscal year.".

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer or any person serving in an equivalent position for the issuer was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.".

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) DEFINITION.—For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

(a) COMMISSION REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title.

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and

nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

"(1) COMMISSION RULES.—

"(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

"(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

"(3) INDEPENDENCE.—

"(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

"(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

"(ii) be an affiliated person of the issuer or any subsidiary thereof.

"(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

"(4) COMPLAINTS.—Each audit committee shall establish procedures for—

"(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

"(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

"(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

"(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

"(B) to any advisers employed by the audit committee under paragraph (5).".

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) CERTIFICATION OF PERIODIC REPORTS.—Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, shall be accompanied by a written statement by the chief executive officer and chief financial officer (or the equivalent thereof) of the issuer.

(b) CONTENT.—The statement required by subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

(c) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated

or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking "substantial unfitness" and inserting "unfitness".

(2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking "substantial unfitness" and insert "unfitness".

(b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.".

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security), during any blackout period with respect to such equity security, in accordance with any exception provided by rule of the Commission pursuant to subsection (d).

(b) EFFECTIVENESS.—

(1) NOTICE REQUIREMENTS.—Except as provided in paragraph (2), no blackout period may take effect earlier than 30 days after the date on which written notice of

such blackout period is provided by the plan administrator to the participants or beneficiaries.

(2) EXCEPTION.—The 30-day notice requirement in paragraph (1) shall not apply, and notice under paragraph (1) shall be furnished as soon as is reasonably possible, in any case in which—

(A) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) of the Employment Retirement Income Security Act of 1974, and a fiduciary of the plan so reasonably determines in writing; or

(B) the inability to provide the 30-day notice is due to events that were unforeseeable, or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan so reasonably determines in writing.

(3) WRITTEN NOTICE.—The notice required to be provided under paragraph (1) shall be in writing, except that such notice may be in electronic form to the extent that such form is reasonably accessible to the recipient.

(c) REMEDY.—

(1) IN GENERAL.—Any profit realized by a director or executive officer referred to in subsection (a) from any purchase, sale, or other acquisition or transfer in violation of this section shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(2) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this section may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(d) RULEMAKING AUTHORIZED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "blackout period", with respect to the equity securities of any issuer—

(A) means any period during which the ability of not fewer than 50 percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan, is suspended by the issuer or a fiduciary of the plan; and

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction; and

(2) the term "individual account plan" has the same meaning as in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that is required to be prepared in accordance with generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

"(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Public Company Accounting Reform and Investor Protection Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condi-

tion, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.".

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

"(1) IN GENERAL.—It shall be unlawful for any issuer, directly or indirectly, to extend or maintain credit, or arrange for the extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer.

"(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners Loan Act), consumer credit (as defined in section 103 of the Truth in Lending Act), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), that is—

"(A) made in the ordinary course of the consumer credit business of such issuer;

"(B) of a type that is generally made available by such issuer to the public; and

"(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such loans.".

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) by striking "security, shall file," and inserting the following:

"(1) shall file"; and

(2) by striking "beneficial owner, and" and all that follows through the end of the subsection and inserting the following: "beneficial owner; and

"(2) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible, indicating ownership by that person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under this paragraph.".

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS.

(a) CODE OF ETHICS DISCLOSURE.—The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer, comptroller or principal accounting officer, or persons performing similar functions.

(b) CHANGES IN CODES OF ETHICS.—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8-K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics of the issuer.

(c) DEFINITION.—In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING "FINANCIAL EXPERT".—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is com-

prised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS.

(a) RULES REGARDING SECURITIES ANALYSTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by adding at the end the following:

"(n) RULES REGARDING SECURITIES ANALYSTS.—

"(1) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this subsection, rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

"(A) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

"(i) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

"(ii) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

"(iii) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

"(B) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

"(C) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

"(D) to address such other issues as the Commission, or such association or exchange, determines appropriate.

"(2) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this subsection,

rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

"(A) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

"(B) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this subparagraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

"(C) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

"(D) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

"(E) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

"(3) DEFINITIONS.—In this subsection—

"(A) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

"(B) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.".

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended by inserting "15A(n)," before "15B".

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15A(n) of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

"In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

"(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107-123; 115 Stat. 2390 et seq.);

"(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

"(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.".

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

"SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

"(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

"(1) not to possess the requisite qualifications to represent others;

"(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

"(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

"(b) DEFINITION.—With respect to any registered public accounting firm, for purposes of this section, the term 'improper professional conduct' means—

"(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

"(2) negligent conduct in the form of—

"(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm knows, or should know, that heightened scrutiny is warranted; or

"(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

"(c) STUDY AND REPORT.—(1) The Commission shall conduct a study to determine based upon information for the period from January 1, 1998 to December 31, 2001—

"(A) the number of 'securities professionals', which term shall mean public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

"(i) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (hereinafter collectively referred to as 'Federal securities laws'), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such actions or proceedings (referred to hereinafter as 'aiders and abettors'); and

"(ii) who have been found to have been primary violators of the Federal securities laws;

"(B) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

"(i) the specific provisions of the Federal securities laws violated;

"(ii) the specific sanctions and penalties imposed upon, such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

"(iii) the occurrence of multiple violations by the same person or persons either as an aider or abettor or as a primary violator; and

"(iv) whether as to each such violator disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

"(C) the amount of disgorgement, restitution or any other fines or payments the Commission has (i) assessed upon and (ii) collected from, aiders and abettors and from primary violators.

"(2) A report based upon the study conducted pursuant to subsection (c)(1) shall be submitted to the Senate Committee on Banking, Housing, and Urban Affairs no later than 6 months after the date of enactment of the 'Public Company Accounting Reform and Investor Protection Act of 2002'.

"(d) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with re-

spect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.".

(b) ELECTRONIC FILING.—Notwithstanding the provisions of section 403 of this Act, section 16(a)(2) of the Securities and Exchange Act of 1934, as added by section 403, is amended to read as follows:

"(2) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security, shall file electronically with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement before the end of the second business day following the day on which the subject transaction has been executed, or at such other times as the Commission shall establish, by rule, in any case in which the Commission determines that such 2 day period is not feasible, and the Commission shall provide that statement on a publicly accessible Internet site not later than the end of the business day following that filing, and the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website not later than the end of the business day following that filing (the requirements of this paragraph with respect to electronic filing and providing the statement on a corporate website shall take effect 1 year after the date of enactment of this paragraph), indicating ownership by that person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under this paragraph.".

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

"(7) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

"(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

"(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

"(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.".

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;"; and

(2) in subparagraph (G), by striking the period at the end and inserting the following: "; or

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended by striking paragraphs (7) and (8) and inserting the following:

"(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser; or

"(8) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F)), by inserting ", or is subject to an order or finding," before "enumerated";

(B) in each of sections 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o-4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o-5(c)(1)) by striking "or omission" each place that term appears, and inserting ", or is subject to an order or finding,"; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q-1(c)), by inserting ", or is subject to an order or finding," before "enumerated" each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended, by inserting "or (3)" after "paragraph (2)".

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the role of credit rating agencies in the evaluation of issuers of securities;

(B) the importance of that role to investors and the functioning of the securities markets;

(C) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the study required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 180 days after the date of enactment of this Act.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 10 years, or both.

"§ 1520. Destruction of corporate audit records

"(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

"(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic

records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies.

"(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 5 years, or both.

"(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

"1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

"1520. Destruction of corporate audit records.".

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by adding at the end, the following:

"(19) that—

"(A) arises under a claim relating to—

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

"(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results, in relation to any claim described in subparagraph (A), from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.".

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Except"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

"(1) two years after the discovery of the facts constituting the violation; or

"(2) five years after such violation.".

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) documents and other physical evidence are actually destroyed, altered, or fabricated;

(B) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(C) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(5) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(6) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

"§ 1514A. Civil action to protect against retaliation in fraud cases

"(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

"(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

"(A) a Federal regulatory or law enforcement agency;

"(B) any Member of Congress or any committee of Congress; or

"(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

"(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

"(c) REMEDIES.—

"(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

"(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

"(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

"1514A. Civil action to protect against retaliation in fraud cases.".

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Securities fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); shall be fined under this title, or imprisoned not more than 10 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1348. Securities fraud.".

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 901. SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 902. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(1) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following: "1348. Failure of corporate officers to certify financial reports.".

SEC. 907. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five" and inserting "ten".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five" and inserting "ten".

SEC. 908. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(2) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so; shall be fined under this title or imprisoned not more than 10 years, or both.".

SEC. 909. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

"(3) TEMPORARY FREEZE.—(A) Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

"(B) If the individual affected by such order is charged with violations of the Federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.".

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking "This" and inserting "Paragraph (1) of this".

SEC. 910. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 911. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Securities Exchange Act of 1934, add at the end a new subsection as follows:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

(b) In section 8A of the Securities Act of 1933 add at the end a new subsection as follows:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

The PRESIDING OFFICER. The Senate insists on its amendment and requests a conference with the House.

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

VOLUME 148, THURSDAY, JULY 25, 2002, NUMBER 103, PAGES [S7350–S7365]

Sarbanes-Oxley Act of 2002—Conference Report

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to acompany H.R. 3763, which the clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of July 24, 2002.)

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I suggest the absence of a quorum and ask that the time not be charged against either manager.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Madam President, parliamentary inquiry of the Chair: What is pending before the Senate?

The PRESIDING OFFICER. The debate on the conference report is limited to 2 hours equally divided.

Mr. SARBANES. So there is 1 hour on each side.

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. Madam President, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Madam President, I am very pleased that we are now considering the conference report on the Public Company Accounting Reform and Investor Protection Act of 2002. The Senate approved this legislation on July 15 on a 97-0 vote. Conferees were

named promptly both here and in the House, and the conference committee immediately went to work.

Agreement was reached yesterday in the early evening, about 7 o'clock, by the conference committee, and the House took up the conference report this morning and acted on it earlier in the day. The vote, I believe, was 422—3.

The conference report has now come over to us, and obviously, under our procedures, it is our turn to proceed to consider it.

This legislation establishes a carefully constructed statutory framework to deal with the numerous conflicts of interest that in recent years have undermined the integrity of our capital markets and betrayed the trust of millions of investors.

I say to my colleagues that in every one of its central provisions, the conference report closely tracks or parallels the provisions in the Senate bill for which, as I indicated earlier, all the Members present at the time, 97 of us, voted only a short time ago.

This legislation establishes a strong independent accounting oversight board, thereby bringing to an end the system of self-regulation in the accounting profession which, regrettably, has not only failed to protect investors, as we have seen in recent months, but which has in effect abused the confidence in the markets, whose integrity investors have taken almost as an article of faith.

This legislation reflects the extraordinary efforts of many colleagues on both sides of the Capitol. I want especially to recognize and express my deep gratitude to Senators Dodd and Corzine who early on introduced legislation that in many respects serves as the basis for titles 1 and 2 of this legislation.

On the House side, Congressman LaFalce introduced comprehensive legislation on which we drew.

I also wish to acknowledge the many important contributions that my Republican colleague, Senator Enzi, made at every step in the process. Senator Enzi had legislation of his own, but in addition we worked very closely in the course of developing this legislation. Again and again I was struck by the thoughtfulness and reasonableness of his proposals for improving in the legislation. While in the end not all of them were included in the legislation, a significant number are, and I thank him very much for all his contributions.

Before addressing the major provisions of the legislation, let me make very clear that it applies exclusively to public companies—that is, to companies registered with the Securities and Exchange Commission. It is not applicable to provide companies, who make up the vast majority of companies across the country.

This legislation prohibits accounting firms from providing certain specified consulting services if they are also the auditors of the company. In our considered judgment, there are certain consulting services which inherently carry with them significant conflicts of interest. Auditors, in effect, find themselves in the position of auditing their own work. They may be acting as management of the company, for instance, on personnel matters when, as the outside auditor, they were supposed to be standing one step removed from the company as the outside auditor. This is the reasoning behind the prohibition.

What has happened in recent years is that the fees earned from the consulting work have dwarfed the fees earned from the auditors, which inevitably leads to concerns that punches may be pulled on the audit to accommodate the significant and remunerative involvement on the consulting side. Certain enumerated consulting practices are therefore not allowed, with the exception that a case-by-case exemption can be obtained from the oversight board that this legislation establishes.

The auditor can engage in the balance of consulting services with the pre-approval of the audit committee of the corporation. And of course an auditor can engage in whatever consulting services the firm and the corporation agree upon so long as the firm is not also acting as the corporation's auditor.

The bill sets significantly higher standards for corporate responsibility governance. It requires public companies to have independent audit committees and also enhances the role of the audit committee, which will have responsibility for hiring and firing the auditors and setting their compensation.

The legislation requires full and prompt disclosure of stock sales by company executives. Senator Carnahan added an important provision to the bill, requiring electronic filing with respect to such sales. That requirement would take effect in a year's time, to allow time for the necessary systems to be put in place; once in place it will assure prompt and accurate disclosure of these very significant transactions.

The legislation places limits on loans by corporations to their executive officers. It sets certain requirements for disclosure with respect to special purpose entities, which were used by some corporations that have run into such serious difficulty in recent months. It seeks to address the statement of pro forma earnings, in order to assure a more complete and accurate picture of a public company's financial position.

It also addresses the conflicts of interests that arise for stock analysts to whom investors look for impartial research-based advice about stocks. Unfortunately, many of these analysts are under pressure to promote stocks in which their broker-dealer firms may have an investment banking interest; on the one hand they are supposed to give unbiased advice to potential purchasers of stock, whether to buy or sell, but at the same time the firm of which they are a part is interested in developing a business relationship with the company on which the analyst is passing judgment. It has been sobering to discover that analysts have been formally recommending certain stocks to the investing public, while at the same time discussing them contemptuously among themselves. We have had too many demonstrations of this occurring.

The legislation includes provisions to protect analysts against retaliation, in cases where a negative recommendation may invite retaliation. Furthermore, the bill authorizes significant increases in funding for the Securities and Exchange Commission, which for the first time in many years will give it something close to the funding resources it needs.

There are also extensive criminal penalties contained in this legislation. These were initially included in legislation reported by the Judiciary Committee, which Senator Leahy offered as an amend-

ment to the bill. The House then passed its own bill with respect to criminal penalties, a separate standing bill, which in many instances doubled or even tripled the penalties in the Leahy proposal as it came to the floor, and the Leahy proposals were further supplemented by an amendment from Senators Biden and Hatch and another from Senator Lott.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. SARBANES. I yield myself 4 additional minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. SARBANES. These provisions, among other things, require the CEOs and CFOs to certify their company's financial statements under penalty of potentially severe punishments.

We provide a $776 million authorization for the SEC. I want to spend a minute on this point, because it is very important. The Senate Appropriations Committee is now working on an appropriation that would contain $750 million for the SEC. It is urgent that we provide adequate funding for the Commission, whose responsibilities have expanded as the volume of market activity has grown, but whose funding has lagged. Clearly, the Commission must have the resources necessary to ensure a decisive and expeditious response to the scandals we have seen in recent months, and to minimize the likelihood that we will see others in the future.

I must underscore this point. The Commission has been underfunded, and the result has been understaffing, high staff turnover and low morale as the Commission seeks to carry out its work. The SEC must be in a position to address immediately the problems of inadequate staff resources and inadequate pay.

At the moment, the SEC cannot offer its attorneys and accountants the same level of salary and benefits that their counterparts receive at the five Federal bank regulatory agencies. Talented and dedicated staff attorneys and accountants can increase their compensation by as much as one-third simply by moving to another agency. This is an intolerable situation. Pay parity has been authorized and now must be funded; this legislation specifically provide the necessary funding.

In addition, the authorization provides funding that will enable the Commission to upgrade its technical capacities, its computer systems, and it provides significant resources so that the Commission can augment its staff of attorneys, accountants and examiners at a time when they are needed to address a very heavy workload burden.

As an aside, I mention that this morning the committee reported to the Senate four nominees to bring the Securities and Exchange Commission to its full complement of five members. I very much hope we will be able to approve them next week so that they will be able to take their positions before the August recess. If we do, the Commission will be at full strength. They will all be in place and ready to do the job, and I think that is highly desirable.

In closing, let me say that I believe this conference report reflects our best efforts to deal with issues which we know to be numerous and complex. Throughout the process, we have worked together carefully on these issues. We have sought advice from the most distinguished and experienced practitioners in the field. We held 10 hearings in March with some of the very best experts in the coun-

try as our witnesses. We have consulted extensively, and I hope my colleagues will agree in good faith and across party lines. Our vision has been broad, our purpose steady. I think our approach has been reasonable.

We will send to the President legislation establishing a solid statutory framework for the reforms we know are urgently needed.

Our markets have benefited beyond measure from the statutory framework that created the SEC nearly 70 years ago. Indeed, I think we have had a tendency to take that for granted. Those markets have been a very significant economic asset for the United States, and an integral part of our economic strength. This legislation will serve to complement and reinforce that framework, which has served us well, and I believe it will stand the test of time.

Our markets, which have the reputation of being the fairest, the most efficient, the most transparent in the world, have suffered greatly in recent times, so much so that they seem to have lost the confidence of our investors. It is our purpose, with this legislation and through other actions that will have to be taken by the regulatory agencies and by the private sector, to see that once again our capital markets deserve the enviable reputation for fairness, efficiency, and transparency that they have enjoyed through the years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I yield myself such time as I may consume.

I want to begin with some thank-yous and congratulations. First, I want to congratulate Senator Sarbanes on this bill, and I want to make note that in a very difficult period, where so many were trying to point the finger of blame, when it seemed almost every day that people were clamoring to make the strongest statement they could make to get the sound bite on television, Senator Sarbanes could have taken that same route in the Banking Committee. We are the committee that has jurisdiction over the issues that had been at the very heart of our recent concerns in the capital markets.

However, Senator Sarbanes did not take that route. I congratulate him. He not only brought good reflection on himself, but he helped raise the esteem that the Banking Committee is held in and reflected well on the Senate. We had hearings but we were focusing on what could be done to fix the problem. As a result, those hearings were the most productive that were held. They contributed to bringing us to where we are.

Now let me make it clear, from the very beginning there has been a broad consensus, and a very deep consensus, on 90 percent of the issues in this bill. One of my frustrations in this debate—and when you are debating something as high profile as this is, there are frustrations. I am not complaining—as my wife says whenever I complain about this job, not only did nobody force you to take it, but a lot of good people worked hard to keep you from getting it—I am not complaining, but part of our problem has been that the media has wanted to present this as a debate that had to do with how tough people were being, to the exclusion, often, in my opinion, of how reasonable we need to be.

We have before the Senate a bill that is clearly an improvement over the status quo. I don't care how disappointed you are in any one provision—and on several provisions I am very disappointed. No matter how disappointed a Member is, this is an improvement over the status quo, and for two reasons. One is obvious. That is, we needed stiffer criminal penalties. And, second, we needed to create an independently funded and an independently operating accounting oversight board so that we could deal with ethics questions in a framework that will promote high ethical standards, in the framework of independence. In addition, we desperately needed to have an independently funded FASB.

I would just say as an aside, Madam President, over the years I have agreed with FASB in some of their decisions; I have disagreed with FASB on some of their decisions. However, I am proud to be able to say today I have never taken the position that Congress ought to override FASB. As incomprehensible as some of their rulings have been to my way of thinking, having Congress vote on accounting standards is a very dangerous thing.

Some of our colleagues want to vote on the whole issue of expensing stock options. Wherever you come down on that issue, having Congress vote on accounting standards is very dangerous, very counterproductive. I hope that will not happen. Certainly, I am not going to vote to impose accounting standards on this board. We want FASB to set accounting standards. We want to be sure they have the independence that is necessary to allow them to do it.

In those areas there has never been a disagreement on this bill. The disagreements that have occurred have had to do with the perception of individual Members as to what was practical, what was workable, what was desirable. The one view I have always subscribed to, and I would have to say given my period of service in public life I am more convinced of it than ever, is that Thomas Jefferson was right when he said good men—he would say good people today, of course—good men with the same information are prone to have different opinions.

There is a natural tendency in the human mind to think, if people disagree with you, that either, A, they don't know what they are talking about; or B, they don't have good intentions. I subscribe to the Jefferson thesis.

The areas where I disagree with the bill are pretty straightforward. First of all, I believe there is a very real problem in auditor independence. If I were a member of this new accounting oversight board that we are going to put into place and I had to vote on the nine prohibited areas that are written into law in the bill, I would want to study them in detail. I might very well support all nine of them. I do not believe they should be written into law.

The advantages of letting the board set these standards—it seems to me that there are three:

No. 1, the board is going to have more time and more expertise than we have and is likely to do a better job.

No. 2, if we make a mistake and we write it into law, it is hard to fix things that are written into law. As Alan Greenspan has said, if Glass-Steagall, Depression-era banking legislation, had been a regulation, it clearly would have been changed by the 1950s. We did not change it until 1999. It took a long time to change it.

Finally, and probably of greatest importance, there is a natural tendency when we are talking about the problem in an era where we are all reading about Enron and WorldCom and the huge companies, to forget this law will apply to 16,254 companies. Many of these companies are quite small. One of the advantages of allowing the accounting oversight board to set out prohibitions on auditors performing other services in regulation, instead of prescribing them in law, is that the board can find a system whereby they can recognize what is practical in dealing with smaller companies and how that might differ from what is practical for General Motors.

An example that has come to my mind is one where I am operating a small public company, stock traded on an exchange or on Nasdaq, and I employ an accounting firm that has a CPA who basically does my auditing. He is in Houston. I am trying to hire a new bookkeeper in my company. I have three candidates. When my auditor is in town auditing my books, I say: I have these three candidates. I majored in physics in college, and I don't know anything about accounting. Could you interview these three bookkeepers and tell me who you think would be best?

Under this bill, that would be illegal. That would be providing a personnel service. It is prohibited for my auditor to provide that service for me as well.

For General Motors, should your auditor be providing a personnel service? My guess is they probably should not. But for this small company in College Station, Texas, what this prohibition ultimately will do is force them to do one of three things: In all probability, they will hire the bookkeeper without ever getting the advice of a CPA; No. 2, they can hire another CPA to interview these three candidates for a bookkeeper and pay them; No. 3, they can file for a waiver through the SEC and through the board. Each option is a worse choice from those available to such a small company today, and a worse choice for its shareholders.

The bill allows a waiver on an individual company by company basis. I rejoice that is the case. I personally believe we should have given the board, with the agreement of the SEC, the ability to grant blanket waivers based on the circumstances of classes of individual companies.

For example, if you have already granted 1,000 waivers where companies have applied for a waiver for a certain requirement based on their size, their location, practicality, the cost, whatever, at that point shouldn't the board be able to say: We have established this principle, and if your company meets these conditions, you are granted the waiver? Then, all they have to do is prove they meet the conditions.

My concern—and who knows, maybe this will be true, maybe it will not. The problem is we are legislating. We don't know. We can't look into the future. My concern is that by not granting them the ability to provide blanket waivers we are going to force a lot of smaller companies to hire lawyers and lobbyists to come to Washington to petition the SEC and the board. My concern is that this is going to use up their time and use up the resources of companies.

There is another side of this story and that is the concern that blanket waivers could be used to get around the intent of the law.

How do you deal with that? How do you find a happy balance? It is not an easy question. I would have to say I believe we have imposed a one-size-fits-all regimentation that is going to be difficult to deal with—not impossible to deal with, but I think it is going to be difficult.

Another problem I have is that we have in this bill an accounting oversight board. Its members are not elected officials. They are not appointed in the sense that they are not Government officials. They will have the ability to make decisions that will affect the livelihood of Americans who are in the accounting profession. They will literally have the ability to say to a CPA: We are taking your license away and you can never practice again in providing accounting services to a publicly traded company.

Clearly, there are cases where that is justified. Clearly, there are cases where people ought to be fined and, clearly, there are cases where people ought to be put in prison. But I think when you are taking people's livelihoods, they ought to have an opportunity to appeal to the Federal district court where they live.

I think there ought to be a burden on them to make their case, and obviously the court is going to take into account that this board, that was duly constituted, made a decision. But I think that is an opportunity that people ought to have that they do not have under this bill.

I am also concerned about litigation. During the whole Clinton administration, there was only one bill where we overrode the President's veto, and that was a bill having to do with private securities litigation reform. We had a massive number of predatory strike suits where people filed lawsuits against companies. They almost always settled out of court. We had one law firm that filed the lion's share of the lawsuits. And the chief lawyer in that company said, in effect, "It is wonderful to practice law where you don't have clients."

That was a mistake when he said that, but he said it.

We took action to try to eliminate or minimize this abuse. In doing so, we codified a 1991 Supreme Court decision that addressed what happens if you think you have been wronged. We are not talking about criminal activity. We are not talking about SEC enforcement. We are not talking about the Justice Department. We are talking about civil disputes that people have. Under that law, in codifying what the 1991 Supreme Court decision said, we said that within a year after you believe you have been wronged, you have to file your lawsuit, and within 3 years after the event happens, you have to file your lawsuit.

One of the things this bill does, which I oppose, is it raises that to 2 years and 5 years, respectively. I would say that if there were evidence that people were not getting these lawsuits filed because of a lack of time, that under the circumstances I think that increasing the statute of limitations would have been justified. But as we have looked at the data, the mean average lawsuit is filed 11 days after the injury is discovered. Something like 90 percent of the lawsuits are filed in the first 6 months. It seems to me that this provision and other provisions of the bill that expand the ability of people to sue may have a positive effect in making people pay attention to their business, but we all know, based on our legal system,

that it is going to be abused and that very heavy costs are going to be imposed on the private sector of the economy as litigation costs ultimately are added to the cost of the product that is produced and reduced from the stock value held by shareholders.

I could go on and on. There are other people who want to speak. We are under a time limit. But let me sum up.

I thought about this long and hard, and as I thought about this bill, I had to weigh, Does it do more good than harm? I have concluded that it does. It does less good than it could have done; it does more harm than it should have done—we could have corrected these things—but, quite frankly, in the environment we were in it was impossible. In the environment we were in, where everything was judged on some concept of being tough rather than on practicality and workability, it was impossible for us to come back and deal with these problems.

Finally, in the timeframe that we all faced in conference, we never really got around to discussing the practical kinds of things that do not seem important when you are writing law but seem very important 2 or 5 years later when you are implementing it.

Having said all that, I cannot stand up here and argue that this bill has worsened the status quo. This bill is better than the status quo for two reasons. No. 1, change needs to be made and criminal penalties need to be raised. These independent boards need to be established, and 90 percent of this bill, in my opinion, clearly represents a step in the right direction.

But, second—and this may sound like strange logic but I think it is important. I think to understand American government you have to understand it. The American people expect Congress to respond to a problem. We may not know the answer. We may not have perfect knowledge. But they expect us to try to do something about it. That in and of itself is an argument to which we should respond.

I would argue—being a conservative, as everyone engaged in this debate knows—I would argue we need to be careful. But in the end this bill is an improvement on the status quo. It could have been better. There are changes that could have been made that were not. But in the end, I cannot argue that this bill should not pass, should not become law. The President is going to sign the bill, and clearly he should.

I do believe we will have to come back after the fact and we will have to correct some of these issues. I think as time goes on we will see we may not have done enough in one area. Maybe we went overboard in another area. But the Congress will meet again, people will be paid to do this work, and I am confident that it will be done.

So let me conclude on this thought. I believe the marketplace has gone a long way toward solving this problem. I think the New York Stock Exchange action was excellent. Once again, they are proving that they are a great institution. As I have often said about the New York Stock Exchange, I feel as if I am standing on holy ground at the New York Stock Exchange.

Every boardroom is different from what it was before this crisis started. No one sitting on a board, corporate board or an audit committee, will ever be the same. No auditors will ever look at their

task the way they did before all of this started, at least for a very long time. or at least for a very long time.

One of the advantages of having structure is when they forget, the structure won't forget. I totally agree with that. I think this represents a complement to it.

There is much in here I would have done differently. But in the end, I think this is a response that people can say the Government did hear, the Government did care, and Congress did try to fix it. I don't doubt that there are mistakes in here. I think I could name some, if asked to. But, on the whole, this is a response that was aimed at the problem. People went about it in a reasonable manner.

Certainly, the authors of this bill intended to do as good a job as they could do.

I again want to congratulate Senator Sarbanes. I also want to thank him, looking back now at how quickly the conference went. I know people were unhappy when we had this period when the floor was tied up, and there were numerous amendments people wanted to add to the bill. But I think, given how the whole thing played out, it worked out from that point of view pretty much right.

If people on Wall Street are listening to the debate and trying to figure out whether they should be concerned about this bill, I think they can rightly feel that this bill could have been much worse. I think if people had wanted to be irresponsible, this is a bill on which they could have been irresponsible and almost anything would have passed on the floor of the Senate.

I think given where we are on this bill that it is a testament to the fact that our system works pretty well.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). Who yields time?

Mr. GRAMM. Mr. President, I yield 12 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Thank you, Mr. President.

I am here today to speak in support of the conference report to the accounting reform bill. I will be encouraging all Senators to vote for the conference report.

This is earthshaking legislation that has been done with tremendous speed. It had to be earthshaking because we are trying to counteract the tremors from the volcanic action of the mountaintop being blown off such companies as Enron, WorldCom, Global Crossing, and others. Those collapses have set up a series of tremors across this country.

Congress is not the one to solve all the problems. But as Senator Gramm just mentioned, we are expected to work at solving all of the problems. We have put in a huge effort on this bill, and it will make a difference.

While we have been working, the stock market has been going through some tremendous gyrations. I think some of those reactions in the stock market were to see how carefully we would consider and resolve this issue. I believe, the stock market was worried that we would overreact. The market watched to see if Congress would keep adding and adding things, until we destroyed the

whole system. They can now see that did not happen—Congress acted responsibly. We took a long and tough look at the problem and reacted, but we did not overreact. At the same time corporations across the country have been making sure they did not have the kinds of problems brought to light in a few of these companies.

"Corporations" should not be a bad word in this country. This country was built on business.

I always like to mention that it was primarily built on small business—small businesses that grew up, in many cases, but nevertheless ideas that started out as a small business.

We have to keep our focus on those small businesses, and make sure they are able to continue to operate in the climate that we have in the United States and under the laws that we pass.

I am pleased to say that the actions we took in this bill provide some assurance to small businesses and small accounting firms that they can continue to operate the way they have in the past.

We have given encouragement to the States not to run out and apply the same types of laws. I hope the States are paying attention because they will ruin a very good thing if they destroy small business. Keep the eye on small business, and we will continue to have big business.

Corporations have been checking what has been going on in their firms to a greater extent than they have ever before. Boards, CEOs, CFOs, and audit committees have been checking to see if they have the kinds of problems that brought down these other companies.

It is much like when there is a plane crash. Right after a plane crash is probably the safest time in the world to fly because everybody checks their equipment ever so much more carefully to make sure that the kind of defects that may have caused other problems will not happen to them. And the effect lasts for a long time afterwards.

Corporations have been checking their books. They have begun changing procedures. Some of the changes they have made have resulted in restatements. They have paid a price for doing restatements. But they have done the right thing by doing a restatement, and they should be recognized for that. I mentioned speed before. The Senate is not designed for speed. We started out slow. We held 10 hearings. We looked at the issues very carefully, everybody resolved in writing their own ideas.

One of the tough things about legislating is putting it down in writing. The concepts are so easy, but the details are so tough.

There are a number of people who drafted bills on this—both in the House and in the Senate. On this side, Senator Gramm and I drafted a bill. Senator Corzine and Senator Dodd introduced a bill. Of course, Senator Sarbanes had the overreaching bill, and I believe his benefited a little bit from having copies of both the House and Senate bills on which to build his bill. I compliment him for the way he took ideas from all of these different approaches.

Again, it shows the value of legislating by a wide variety of people. You get a wide variety of viewpoints, which actually provides some insights into areas that a person might not have thought about.

But, at any rate, we concluded the hearings, and we merged the bill. This came to committee the week before the Fourth of July. It passed out of committee in one day. It came to the floor of this body just 2 weeks ago. And now, it has already been conferenced, and come back to us for final passage. Part of that is a result of the atmosphere we are in, and the need for action. Timing can be everything on a bill. But part of it is because of the concentration of people who worked on this.

This legislation is a response to problems highlighted by the recent corporation failures of Enron, WorldCom, and others. It does send a clear signal to corporate America that executives can no longer abuse the trust their shareholders place in them without severe consequences.

This legislation builds a strong and independent board to oversee the accounting industry. It will eliminate the climate of self-regulation that has historically guided accounting.

However, I would like to make one point clear. I believe that, overall, accountants take their responsibilities very seriously. They did before, and they do now. We have the best system in the world. What we are doing with this is to maintain that we have the best system in the world. Most accountants are honest and hard working. They work for the benefit of the investors with probably the same percentage of exceptions as other professions.

This legislation will also provide for strong disciplinary action against executives who break the law. No longer will they be disciplined with a slap on the wrist. The bill recognizes that executives who destroy the dreams of investors by irresponsible and unethical behavior will be given the severe punishment they deserve.

I also want to again thank Senator Sarbanes and Senator Gramm for their leadership on this issue. They both have worked tirelessly the past few months to get this bill finished in a timely manner. I particularly appreciate some of the insights Senator Gramm gave me as he worked on this bill in more detail than most people ever achieve. It is his standard, and he carried that out again this time, which did resolve a number of the problems. I want to congratulate Senator Sarbanes, and thank him for the way he conducted the hearings. A lot of people do not realize that the Chairman of a committee usually gets to pick most of the witnesses, and the ranking member gets to pick a few of the witnesses.

As we went through these 10 hearings, I couldn't find any witnesses that I wouldn't have picked were I given the selection. There were some very qualified people who testified. Some of them were even accountants. I did appreciate that. I apologize for asking some questions of them but it was such a great opportunity for me. My staff noticed that when the camera focused in on the person giving the answer, the wedge of people behind them were all asleep.

So what we dealt with is not the kind of thing that Americans get really excited about. It is far too detailed for us to get too excited about it. For accountants, these kinds of discussions are almost like watching ESPN.

Senator Sarbanes did continue to meet with me and other Members and continued to make changes that improved the bill. There

was a wide variety of Senators who worked on this bill. I have mentioned Senators Dodd and Corzine and Gramm. Senator Edwards worked with me on one provision that is in this bill to make sure that not only accountants, analysts, CEOs, CFOs, Boards and audit committees were addressed under this bill, but lawyers have some responsibility, too.

I find it very exciting we are going to make lawyers have a code of ethics when they are dealing with the Securities and Exchange Commission, and that they are going to have an obligation to report things when they find them. I know that causes some consternation among some attorneys, but I think it will make, overall, the same kind of improvements we are expecting from everybody else.

Senators Allen, Gregg, Baucus, Grassley, and Kennedy all worked on some provisions that we don't talk about too much; again, it is in the detail area, but it has to do with the blackout period when you are dealing with pension and other stock sales by executives. I know the intense hours it took to come up with a solution that would work. And if you have that many people agreeing on it, there is probably a good chance it will work.

Again, I congratulate all those people for their constraint in limiting their ideas to what needed to be done for this bill. A lot of ideas were floating around here on lots of things we can with corporations and executives that people want to have fixed, but this bill did maintain some real constraint to stay on topic.

I do believe the conference report is an improved bill from the one that passed the Senate. Again, I appreciate Senator Sarbanes working with me to make some of the changes about which I spoke.

One change we made changes the implication that not all non-audited services should be presumed illegal. The bill has been changed to clearly allow the audit committee to make that determination without the law implying that it is illegal.

In addition, he made some changes dealing with the testing of internal compliance. I believe the new language more clearly represents the true role of auditors. One of the problems we dealt with throughout this process is educating Members on exactly what the role of an auditor is. I believe the new language represents that realization, and I thank the chairman for making the change.

There is another important change in the provision dealing with corporate loans. The provision would still prohibit corporate executives from reaping millions of dollars in loans from their companies, but the new language also realizes that executives need to use things such as credit cards to conduct their business. So this section is a vast improvement.

Another item I would like to comment on is the understanding that insurance companies, many times, have audits they must file with their State regulators. It would be burdensome and expensive to require these companies to hire a separate auditing firm to perform this responsibility. That problem was also recognized, and the needed changes were made.

However, I also understand that due to the time constraints, a report will not be filed with the bill. I think this will pose a series of problems because we will not be defining what the authors actually intended with certain sections of the bill and allowing the

same written discourse that there would be on the bill. I think this may especially cause problems with the extraordinary number of regulations that are going to have to be written to implement the bill.

As the ranking member of the subcommittee with jurisdiction over the Securities and Exchange Commission, I do intend to work closely with the Commission to ensure that the new regulations are consistent with what I see as congressional intent. I will work with others to make sure these regulations conform.

I ask the ranking member, could I have an additional 3 minutes?

Mr. GRAMM. Sure.

Mr. President, I yield an additional 3 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank the Senator.

Mr. President, some of the issues that did not come up in this bill dealt with FASB. We did something marvelous for FASB. We made sure of its independence. One way we made sure of its independence, besides citing in the law, was to make sure FASB has independent funding. They will not have to come to Congress with a budget. And they will not have to go to corporate America for funding. They will get independent funding to be able to do the job they need to do. That will inhibit us from trying to change what they are doing in setting accounting standards.

I am pleased to state that we have taken a look at the things they are working on right now. They are working on four issues that are extremely important to make sure what happened with other companies will not happen again.

I have to tell you, in those four things they have listed as a priority, one of them is not stock options and what to do with them. They do need to address that, but I certainly hope that Congress does not decide that what we see as a problem does supersede other problems that may have caused collapses such as Enron's.

So I hope we will not get in a position of dictating now to FASB what they should be working on, and in what order, and to what degree, or, worse yet, just going ahead and passing accounting standards on our own.

With respect to section 302, the conference recognizes that results presented in financial statements often necessarily require accompanying disclosures in order to apprise investors of the company's true financial condition and results of operations. The supplemental information contained in these additional disclosures increases transparency for investors. Accordingly, the relevant officers must certify that the financial statements together with the disclosures contained in the periodic report, taken as a whole, are appropriate and fairly represent, in all material respects, the operations and financial condition of the issuer.

I also believe the conferees contemplate that the Board will have discretion to contract or outsource certain tasks to be undertaken pursuant to this legislation and the regulations promulgated under the Act. The Board may outsource functions which can be done more efficiently by existing and established organization. An exercise of discretion in this manner does not absolve the Board of re-

sponsibility for the proper execution of the contracted or outsourced tasks.

I also believe that the Conferees expect that the Board and the standard setting body will deem investment companies registered under Section 8 of the Investment Company Act of 1940 to be a class of issuers for purposes of establishing the fees pursuant to this section, and that investment companies as a class will pay a fee rate that is consistent with the reduced risk they pose to investors when compared to an individual company. Audits of investment companies are substantially less complex than audits of corporate entities. The failure to treat investment companies as a separate class of issuers would result in investment companies paying a disproportionate level of fees.

In addition, I believe we need to be clear with respect to the area of foreign issuers and their coverage under the bill's broad definitions. While foreign issuers can be listed and traded in the U.S. if they agree to conform to GAAP and New York Stock Exchange rules, the SEC historically has permitted the home country of the issuer to implement corporate governance standards. Foreign issuers are not part of the current problems being seen in the U.S. capital markets, and I do not believe it was the intent of the conferees to export U.S. standards disregarding the sovereignty of other countries as well as their regulators.

I also realize inconsistencies appear in sections 302 and 906. The SEC is required to complete rulemaking within 30 days after the date of enactment with regard to CEO certification under section 302. However, section 906 suggests that certification would be required upon enactment, thus the penalties would go into effect before the certification requirement is completed through the rulemaking process. I believe it was the intent of the Conferees that the penalties under section 906 should not become effective until the rulemaking process is finalized.

Under the conference report, section 3(a) gives the SEC wide authority to enact implementing regulations that are "necessary or appropriate in the public interest." I believe it is the intent of the conferees to permit the Commission wide latitude in using their rulemaking authority to deal with technical matters such as the scope of the definitions and their applicability to foreign issuers. I would encourage the SEC to use its authority to make the act as workable as possible consistent with longstanding SEC interpretations.

Finally, I not only thank the Senators I have been able to work with on this, but I also thank the staffs. I thank particularly Katherine McGuire, my legislative director, and Mike Thompson, who handles my banking issues. I also thank Kristi Sansonetti, who works on all of my legal issues, and Ilyse Schuman, who played a very important role in the blackout pension period.

I thank, on Senator Sarbanes's staff, Steve Harris, Marty Gruenberg, Steve Kroll, Dean Shahinian, Lynsey Graham, and Vince Meehan.

I thank, on Senator Gramm's staff, Wayne Abernathy, Linda Lord, who is probably one of the most knowledgeable lawyers in this area I have ever encountered, Michelle Jackson and Stacie Thomas.

And, on Senator Dodd's staff, I thank Alex Sternhell.

America will never know all the work these people have done on this bill, the hours they have spent on it, daytime and nighttime. I have seen them working in the early morning hours on this, and that is after spending the previous night working on it. They have just spent incredible time on this.

There is some incredible expertise among these people. Without their help, we would have never gotten to this point. So I thank all of them.

I thank the chairman and Senator Gramm and all the others who have had a part in this. It is time we adopt this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, let me first say, I think Senator Enzi has been extremely gracious in recognizing the extraordinary contribution that has been made by the staff as we have formulated this legislation. I appreciate him doing that. I certainly associate myself with his remarks about the dedication and the perseverance and the extraordinarily high level of competence that is brought to this matter by staff on both sides of the aisle—committee staff and personal staff.

Mr. President, I yield 10 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I am honored today to stand before the Senate to express my strong support and appreciation for the conference report that I suspect, within an hour or so, we will adopt, and, hopefully, unanimously, as we did the original bill that came out of the Senate.

I think it is historic. I think it is truly critical in bringing about the kind of important reforms that will make a real difference to our financial system, not just today but I think as a standard it will be very much an important part of the structure of our financial system for decades to come.

I have said often, since we have talked about this legislation, that it really does, in my mind, fill a large gap that has been missing in our securities laws that were written 70 years ago. I think it very well may be the most important step we will have taken in that interim period, to make sure we have a measured but strong securities and reporting structure in our Nation that makes for the depth and breadth and beauty and effectiveness of our financial markets.

This legislation, as has been noted, comprehensively deals with reform of our accounting profession, enhances corporate accountability, improves transparency, moderates conflicts in a number of parts of our financial world, deals with the transparency of corporate financial statements, strengthens the SEC, tightens penalties and more securely sets the law, and ultimately, I believe, will restore the trust, the needed trust, and investor confidence in the integrity of America's capital markets.

This was an absolutely necessary step at this time in our Nation's history. There has been an enormous betrayal of trust, demonstrated, certainly, by the headlines and the litany of corporate abuses. Let me say, it goes deeper than just the headlines. There

have been 1,100 corporate earnings restatements in the last 4 years. There is a basic loss of more than just the simple sense of trust that people get from the headlines. It is hard for people to make investment decisions when they don't have good facts, good numbers, and the ability to draw good conclusions about where the investor dollar should go.

It has led to a misallocation of capital. And there was a serious need for people to have reform in this area because this betrayal really went at the heart of why people were employees of various firms, why investors put their trust in investing in companies, and why the American system, which so relies on trust, has been called into question with respect to the integrity of our financial markets in recent days.

It is an extraordinary step. I am pleased to have been a part of it.

I see the chairman just left the Chamber. I want to take a few moments to make sure he knows how strongly I feel about the leadership he played. For those who were not a part of this measured process that Chairman Sarbanes put forward—I have said this to him personally—the 10 hearings we had were the moral equivalent of a graduate finance program. I suspect that very few times in congressional history have we seen the breakdown in the detail and presentation of sophisticated information, complicated topics, presented with the security and integrity that were presented in our hearings that led to the creation of this legislation. He did an incredible job of putting together a bill.

I get a little nervous when I hear people say this was a rush to justice, a rush to an answer. This was one of the most thoughtful and measured programs of review put in place before the legislation was written that absolutely could ever have been conceived. He deserves enormous credit for making sure we were thoughtful in the process.

Like Senator Enzi, I compliment all the staffs who were involved in this. This was an incredible effort on all of their parts. From the bottom of my heart—and I am sure all those others who were involved in this process—I truly appreciate the thoughtfulness and care they all gave to it.

I also would be remiss if I did not mention Senator Dodd for his great help in originally putting together our initiatives with regard to accounting reform, corporate oversight, and resourcing the SEC, which I think are fundamental parts of the legislation. We feel good about that. I think Senator Dodd has taken an extraordinary step in leadership.

Once again, I say to the Senator from Wyoming, this is about making America better. It is fundamentally about doing the right thing at the right time. His leadership on that, to make sure we stayed constrained, as he says, thoughtful, and measured about how we addressed the problem, has been most appropriate, and I have appreciated the opportunity to work with him. I compliment him for that effort.

I would say the same about the Presiding Officer. The addition of a number of the amendments that have come, particularly with regard to bringing in the responsibility that is associated with lawyering in America, as important as it is for accountants and

CFOs and CEOs, I think was an important step. There has been a lot of really great effort here.

Now that the chairman is back in the Chamber, I want to say again, this is a classic example of quality leadership, of thoughtful leadership, and getting to a result that will make a difference in the lives of Americans in the years ahead.

This is a little more personal for me because for the 5 years before I came here, I was a CEO. Sometimes you want to hide from that moniker these days since it is not so popular. I think these days about the words of Andy Grove, who said that he was ashamed and embarrassed by some of the actions and many of the actions that are associated with the abuse we have seen. I stand with Andy Grove on that.

This is not one of our prouder moments in our financial system. But what does make me proud is that we could work together in a bipartisan way to come to a thoughtful, measured response that will make a difference, that really will move our securities laws in a direction that will give the American people confidence in how they read an income statement, when they look at a balance sheet and when they judge where they want to work, that they will have the necessary information.

I am not going to go into detail on the bill. Senator Sarbanes and Senator Enzi did that. It is a great piece of legislation. I don't think it went too far at all. In fact, I think it is about spot on. I am sure there will be things we will need to review in time, tweak with, but this is a good set of initiatives which will make a difference in America's financial system.

When we address these issues, it does beg to recognize that there are additional tasks that need to be addressed. I heard the chairman talk about it is not good enough to authorize; we have to appropriate the funds to go with the necessary obligations we put on the SEC; we need to make sure our new advisory board actually has the resources. I think we do. But their independence, their ability to function, will come because they have the resources. The same as the SEC; we have to do our job in the second part of this to make sure those resources are available.

We do need to make sure the SEC Commissioners are in place so that we can have a credible process of looking at enforcement and review of laws and making sure that as we structure the SEC in the days going forward, we have the best of minds brought to bear there. I hope we can vote on these Commissioners very quickly.

For myself—I know there are differences of views about this—there are other unmet items on the agenda. Not necessarily do they apply to this bill, but in my view we should, as a nation, deal with the stock options issue. I don't think Congress should write the accounting rules, but I believe to recognize that stock options are an expense is relatively self-evident to those who have operated in business. They are used as a substitute for compensation. Compensation is an expense. That is why you see Chairman Greenspan and all of what I think is the critical weight of those who have observed on this issue speaking out that this is an issue that needs to be addressed. The Bermuda registry of companies, derivatives regulation are also issues.

Could I have 1 additional minute?

Mr. SARBANES. I yield an additional minute.

The PRESIDING OFFICER. The Senator may continue.

Mr. CORZINE. We need to address these issues. There are missing gaps in other parts of our oversight of our securities markets and financial markets that need to be addressed.

Finally, I believe there is a gaping hole in our oversight of what our investors and employees and the public need to see addressed, and that is pension reform. I know working their way through Congress right now are a number of initiatives on it. Fewer than 50 percent of Americans have pensions. We have a major need to address this. We should pull it together in as thoughtful a way as Chairman Sarbanes has led our Senate to this conclusion, led this debate to a positive conclusion. I hope we will address that in the future. So, once again, I express my great gratitude to all those involved. I particularly thank Chairman Sarbanes for his strong leadership.

Mr. SARBANES. Mr. President, I thank the able Senator from New Jersey for his kind and gracious remarks about my efforts. I underscore the enormously valuable contribution that Senator Corzine made to the development not only of this legislation but all of the work that has come before the committee. He brought a perspective and perception here that were extremely important, enabling us to work through some difficult issues. I appreciate that.

I yield 7 minutes to the Senator from Vermont, chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the chairman. The Senator from California wishes 1 minute. I yield 1 minute to her.

Mrs. BOXER. Mr. President, I came to the floor to give my deepest thanks to Senator Sarbanes and Senator Leahy for leading us in just the way we needed to be led toward a tough, fair reform that would lead to confidence in our financial system. I also thank Senator Enzi for his work.

I was a stockbroker years ago, decades ago, and in those days the big accounting firms were known for their integrity, and CEOs were highly respected. That check and balance was lost along the way and it must be restored.

I believe this bill will do it and our people will, once again, have trust and confidence in our financial system. They will know when they read an annual report and it is signed off on by an accounting firm that it means what it says and says what it means. That will bring the stock market back into balance. It will not happen tomorrow. This isn't magic legislation. But over time confidence will be restored and our economy will be on solid footing once again. I thank my friends.

Mr. LEAHY. Mr. President, I thank Chairman Sarbanes for his leadership on this impressive bill and on the conference agreement. The then-Congressman Sarbanes was one of the first people I met when I came to Washington as an elected Member of this body. We have been friends from that time forward. I have been so pleased to work with him.

I am proud that the conference agreement includes and adopts the provisions of the Leahy-McCain amendment, which the Senate adopted by a 97-to-0 vote—again, with the strong help and support of the Senator from Maryland.

These provisions are nearly identical to the Corporate and Criminal Fraud Accountability Act, which I introduced with Majority Leader Daschle and others in February. It was reported unanimously by the Senate Judiciary Committee in April.

The Presiding Officer helped get this through the Judiciary Committee. The Leahy-McCain amendment provides new crimes with tough criminal penalties to restore accountability and transparency in our markets. It accomplishes this in three ways: No. 1. It punishes criminals who commit corporate fraud. No. 2. It preserves evidence that can prove corporate fraud. No. 3. It protects victims of corporate fraud.

As a former prosecutor, I know nothing focuses one's attention on the question of morality like seeing steel bars closing on them for a number of years because of what they did.

The conference report includes a tough new crime of securities fraud which will cover any scheme or artifice to defraud investors. We added the longer jail term of the other body.

There are three key provisions of the Senate-passed bill that were not in the recently passed House bill but are now in the conference agreement. I think they are truly an essential part of a comprehensive reform measure. First, we extend the statute of limitations in securities fraud cases. In many of the State pension funds cases, the current short statute has barred fraud victims from seeking recovery for Enron's misdeeds in 1997 and 1998. For example, Washington State's policemen, firefighters, and teachers were blocked from recovery of nearly $50 million in Enron investments by the short statute of limitations. That is why the last two SEC Chairmen—one a Republican and the other a Democrat—endorsed a longer short statute of limitations to provide victims with a fair chance to recoup their losses.

Secondly, we include meaningful protections for corporate whistleblowers, as passed by the Senate. We learned from Sherron Watkins of Enron that these corporate insiders are the key witnesses that need to be encouraged to report fraud and help prove it in court. Enron wanted to silence her as a whistleblower because Texas law would allow them to do it. Look what they were doing on this chart. There is no way we could have known about this without that kind of a whistleblower. Look at this. They had all these hidden corporations—Jedi, Kenobi, Chewco, Big Doe—I guess they must have had "little doe"—Yosemite, Cactus, Ponderosa, Raptor, Braveheart. I think they were probably watching too many old reruns when they put this together. The fact is, they were hiding hundreds of millions of dollars of stockholders' money in their pension funds. The provisions Senator Grassley and I worked out in Judiciary Committee make sure whistleblowers are protected.

Third, we include new anti-shredding crimes and the requirement that corporate audit documents be preserved for 5 years with a 10 year maximum penalty for willful violations. Prosecutors cannot prove their cases without evidence. As the Andersen case showed, instead of just incorporating the loopholes from existing

crimes and raising the penalties, we need tough new provisions that will make sure key documents do not get shredded in the first place.

It only takes a minute to warm up the shredder, but it can take years for prosecutors and victims to prove a case.

The conference report also maintains almost identical provisions to those authored by Senator Biden and approved unanimously by the Senate. These include enhanced criminal penalties for pension fraud, mail fraud, wire fraud, and a new crime for certifying false financial reports. As chairman of the Judiciary's Subcommittee on Crime and Drugs, Senator Biden deserves praise for his leadership of these issues.

It is time for action—decisive and comprehensive reforms that will restore confidence and accountability in our public markets for the millions of Americans whose economic security is threatened by corporate greed.

We cannot stop greed, but we can keep greed from succeeding.

We have seized this moment to make a good beginning to fashion protections for corporate fraud victims, preserve evidence of corporate crimes and hold corporate wrongdoers accountable. We have much to do to help repair the breaches of trust that have so shattered confidence in our markets and market information. We have made a good start today toward restoring that confidence but more will be needed. In addition we will need swift and strong enforcement actions and good faith administration of the reform set forth in our conference report. Our conference is concluding but our work is just beginning.

Again, I thank the Senator from Maryland.

Mr. SARBANES. Mr. President, I thank the Senator from Vermont. I underscore again how important his contributions were. The Senate Judiciary Committee reported out a bill without opposition in the committee. That is something which accompanied this legislation.

I yield 4 minutes to the Senator from South Dakota, and then it is my intention to go to the Senator from North Carolina.

Mr. JOHNSON. Mr. President, most of all I thank him for his extraordinary leadership on the development of this landmark legislation. I think it is fair to say this is the most critically important piece of investor protection legislation since the Securities Act of 1933 or the Securities Exchange Act of 1934.

This comes on the heels of the disclosure of corporate corruption that has been endemic in recent months, where we have witnessed lost jobs, lost savings, lost pensions, and ultimately lost confidence worldwide in America's capital markets.

There is an urgency that strong legislation be passed by this body and the Congress to restore confidence—restore both the perception and the reality of integrity in our capital markets.

This legislation is strong legislation. That is why it has been applauded by editorial writers from the east coast to the west coast. Senator Sarbanes has been the subject of much congratulatory observation on the part of so many. This comes on the heels of, frankly, much weaker legislation that had been passed previously in the House of Representatives, the other body.

By passing a strong Senate bill, we were able to go to conference. I am proud to have served on that conference committee and to craft legislation there that goes in the direction of the Senate rather than in the direction of the other body and gives this Nation strong securities legislation. It provides a stiff penalty for corporate wrongdoing, creates a strong oversight board to ensure that corporate audits are done properly, and that the books, in fact, are not cooked. It imposes tough new corporate responsibility standards and implements control over stock analysts' conflicts of interest, so they are not making a fortune while advising their clients to invest. It requires public companies to quickly and accurately disclose financial information. It ensures that the Securities and Exchange Commission has the resources to accomplish its mission of regulating the securities markets.

These important provisions will ensure that America's financial markets remain efficient and transparent and the envy of the world. It will benefit average people who may not have had enough information to make informed decisions in the past and certainly could not have possibly known that the books were cooked, that the audits were incorrect, and that corruption was running rife. They had no way of knowing that.

This will turn that around. This is not the last word, but this is a critically important step in the right direction to returning integrity to our markets. We can observe, having come through this horrible experience in recent months of disclosure after disclosure of corruption having taken place, a recognition that free market economies can only work when there is a cop on the beat. Free market economies can only work when there are fair, well-enforced, and strictly enforced rules. A free market economy without rules, without a cop on the beat, is not an economy that will ever work at all.

This goes a long way, I believe, to reviving confidence in America's economic future. It goes a long way to restoring the fairness and transparency so that people may make their investments—and investments may go up, and they may go down, but they can know when they make those investments, they are making those investments based on true and accurate analysis and not on bogus numbers that some audit firm on the take has been willing to put forward as the truth when, in fact, they are not the truth.

Again, the whole Nation owes a great deal of gratitude to Chairman Sarbanes and to the Senate, in this case, for what I am confident is going to be an overwhelming vote in favor of this legislation.

I yield the floor.

Mr. SARBANES. Mr. President, I yield 6 minutes to the Senator from North Carolina.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I thank, along with all my colleagues, Senator Sarbanes for the extraordinary work he has done on this bill. We are proud of him. America appreciates very much what he and others who have worked with him have done.

I also thank Senator Enzi, who is in the Chamber, and Senator Corzine, who is presiding, for the work they have done with me on

what I think is an important part of this legislation which, in addition to corporate CEOs and accountants, is holding the lawyers involved in these transactions responsible and accountable; that if they see something wrong occurring, they should do something about it—report it to their client, to the corporation, report it to the CEO, the chief legal officer and, if necessary, report it to the board.

In Congress, we are doing what needs to be done and stepping to the plate with regard to corporate responsibility. That is in striking contrast to what is going on in my home State right now.

At a time when Americans are demanding more corporate responsibility, when Congress is stepping up and doing what needs to be done, the President has gone to North Carolina today to ask for less corporate responsibility, to make it easier on insurance companies and to make it harder on victims.

The President is in North Carolina today proposing some of the smallest limits that have ever been proposed for families who have suffered tragedies, serious problems, as a result of poor medical care at a time when medical malpractice insurance premiums constitute way less than 1 percent, substantially less than 1 percent, of medical care costs in this country.

The President is holding a roundtable, as I speak, on this subject. I would like to see how many victims of medical negligence, of medical malpractice, people who have been devastated and their lives devastated, are participating in this roundtable. I know these people. For many years I have represented them. I have been in their homes. I have been in homes and spent time with families whose child will never walk, who have been blinded for life, who have been crippled for life, who have suffered injuries from which they will never recover.

These children blinded for life, crippled for life, severely injured for life—there is a description in the HHS report on which the President is relying which talks about when juries find they have been hurt and award money to them, they describe it as "winning the lottery ticket." The parents of a child who has been blinded for life, the parents of a child who will never walk, rest assured they do not believe they have the winning lottery ticket.

My question is: How many of those people are the President talking to when he is in North Carolina today? The next time he comes back to North Carolina, we invite him to talk to some of those people because those are the ordinary Americans to whom he should be talking. Those are the people who are going to be impacted. The children who have suffered serious injuries are the ones who are going to have the greatest impact and have their rights taken away by what the President is proposing.

Unfortunately, listening to ordinary people is not what this administration does. They have done it time and time again. It is stunning, but it is sad and consistent. When this administration has a choice between protecting the rights of big companies, big insurance companies versus the rights of ordinary people, they choose the big insurance company, the big companies every single time. They have been dragged kicking and screaming to do something about corporate responsibility, which we are doing in the Congress.

On the Patients' Bill of Rights, on which Senator Kennedy, Senator McCain, and I have worked so hard, they have consistently sided with the big HMOs, which is why we do not have a Patients' Bill of Rights in this country.

On prescription drugs, when we tried to do something about the cost of prescription drugs on the floor of the Senate, this administration consistently sided with the big drug companies. When it comes to the environment, this administration has weakened clean air laws that protect the air for our children and consistently sided with the big energy companies that are polluting our air.

Today the President adds to that list, in going to the State of North Carolina, the big insurance companies. This President loves to talk about compassion. My question to him is: Where is his compassion for the victims?

Mr. President, I yield the floor.

Mr. BAYH. Mr. President, I rise today in support of the accounting reform and corporate responsibility conference agreement. I do so, because I believe very strongly that it is in the best interests of America at this critical time in our history.

I believe it goes way beyond mere accounting issues. What we are agreeing to today deals with the financial security of millions of individual investors across this country, the security of their pensions, their 401(k) programs, and their other investments for the future of their children and their grandchildren.

What we are talking about today involves the very vitality of our economy, the amount of investment that will take place in the economy, the number of jobs that will be created, and the vitality of farms. It involves the standing of America in the international economy, whether we will continue to be a safe haven for investments from those abroad, attracting the capital that helps us build a strong foundation for America's economy.

More than anything else, this bill embodies the basic values upon which this has been based. It clearly answers the question: Will we continue to encourage those virtues that have always characterized America and will our Nation continue to be the land of opportunity based upon hard work, honesty, and playing by the rules or, will we be perceived as the land of opportunity based upon deceit. I believe that the right answer, based upon traditional values and virtues, is embodied in the accounting reform and corporate responsibility bill.

I congratulate our colleagues, Senators Sarbanes, Dodd, Corzine and Enzi. They demonstrated leadership and foresight in this issue.

Since the tragedies of 9/11, our country has been involved in twin struggles: One, the physical national security of this country; and, second, getting this economy moving again to ensure the economic security of Americans across this country. There are parallels between these two challenges. Both occurred as a result of unexpected tragedies but have presented us with opportunities to make this an even better, stronger, more secure Nation. Both involve breaking the political gridlock and the bureaucratic inertia that all too often make progress in this Capitol difficult. And both involve striking the right balance between individual freedom and liberty

on the one hand, that we cherish, and collective security, which makes individual liberty meaningful, on the other.

Let me conclude where I began. This issue goes a long way beyond mere accounting issues. It goes a long way beyond economic policy. It goes to the very heart of who we are, what we stand for as a people, and the kind of values we cherish in the United States of America. This will protect individual investors. It will help to ensure the integrity of our economy. But more than anything else, it will ensure that those Americans who have embraced our tradition with virtues, who have worked hard and saved their money, who have played by the rules, and are honest are able to get ahead in this society.

It will send a loud and clear signal to those who practice corporate fraud that they do not have an avenue to success in this country. That does not embody the best values of America. I strongly support the accounting reform and corporate responsibility conference agreement. I urge my colleagues to enact this important legislation.

Mr. KERRY. Mr. President, I strongly support the Sarbanes-Oxley Act of 2002 because it will help end the corporate abuses that in recent months have plagued our economy and will help restore confidence in our economy. I would like to take this opportunity to express my appreciation for the efforts that Senator Paul Sarbanes, Chairman of the Senate Banking, Housing and Urban Affairs Committee, has made to develop and enact this important legislation. As a former member of the Banking Committee, I know how difficult it is to respond quickly to recent events that affected our capital markets. However, Senator Sarbanes has put together a coalition which led to a unanimous vote in support of his bill in the Senate, and the provisions of which is the base text for this conference report.

The United States must stand for the fairest, most transparent and efficient financial markets in the world. However, the trust and confidence of the American people in their financial markets have been dangerously eroded by the emergence of serious accounting irregularities by some companies and possible fraudulent actions by companies like WorldCom, Inc., Enron, Arthur Andersen and others. Some investment banks have been charged with publicly recommending stocks for public purchase that their own analysts regarded as junk.

The shocking malfeasance by these businesses and accounting firms has put a strain on the growth of our economy. The misconduct by a few senior executives has cost the jobs of hard-working Americans, including 17,000 at WorldCom and thousands more at companies accused of similar wrongdoing. The lack of faith in our financial markets contributed to an overall decline in stock values and has caused grave losses to individual investors and pension funds. For example, the losses to the California Public Employees Retirement System from the recent WorldCom disclosures total more than $580 million.

The conference report creates a new Public Company Accounting Oversight Board to oversee the auditing of companies that are subject to the federal securities laws. The Board will establish auditing, quality control, and ethical standards for accounting firms. The

conference report restricts accounting firms from providing a number of non-audit services to its audit clients to preserve the firm's independence. It also requires accounting firms to change the lead or coordinating partners for a company every five years.

The conference report requires CEOs to certify their financial statements or face up to 20 years in prison for falsifying information on reports. It keeps executives from obtaining corporate loans that are not available to outsiders. It requires public companies to provide periodic reports to the SEC on off-balance transactions, arrangements, obligations and other relationships that may have a material current or future effect on the company's financial condition. It requires directors, officers and 10 percent equity holders to report their purchases and sales of company securities within two days of the transaction.

I am pleased that the conference report includes the Corporate Fraud and Criminal Fraud Accountability Act which will provide for criminal prosecution and enhanced penalties of persons who defraud investors in publicly traded securities or alter or destroy evidence in Federal investigations. It will also prohibit debts incurred in violation of securities fraud laws from being discharged in bankruptcy and protect whistle blowers who report fraud against retaliation by their employers.

The conference report requires the SEC to adopt rules to foster greater public confidence in securities research including: protecting the objectivity and independence of stock analysts who publish research intended for the public by prohibiting the pre-publication clearance of such research or recommendations by investment banking or other staff not directly responsible for investment research; disclosing whether the public company being analyzed has been a client of the analyst's firm and what services the firm provided; limiting the supervision of research analysts to officials not engaged in investment banking activities; protecting securities analysts from retaliation by investment banking staff.

The provisions included in this legislation will help restore confidence in our capital markets and in turn will help provide for future economic growth. It is an important first step, not a last. Mr. President, I am pleased to support the Conference Report and will continue to look for ways to improve investor confidence in our financial markets.

Mr. SCHUMER. Mr. President, everyone knows that New York City is the financial capital of the world. Yet as we continue to rebuild our city in light of the tragic events of September 11, we are now faced with the devastating effects of depressed markets and unsure investors, who are once again victims. With more than half of American households investing in the markets, we're all affected by a crisis in investor confidence.

I can't think of a more appropriate time than the present for the Senate to debate legislation to restore dwindling investor confidence and bring sound footing back to our financial markets. Isn't it ironic? Just a few weeks ago, the headlines read "Sarbanes bill dead" or "Accounting Reform Fading."

In the wake of recent revelations about WorldCom and just 2 days ago Merck, corporate corruption has reached an all-time high; we are now at a new level of corporate corruption. We've reached

a new low and the question every member of the Senate must be asking is: “Where does it end?”

Buzzwords like “accounting fraud,” “corporate corruption,” “Restatements,” “Cooking the books,” are being bandied about in the press, in the coffee shops, at the dinner tables across America. Just this weekend at the Taste of Buffalo, people came up to me and said “Throw ‘em in jail, Chuck!” They were talking about the Ken Lay’s, Bernard Ebers’, the Andrew Fasdow’s of the corporate world. White collar criminals who ran giant corporations and used tricky gimmicks to rob investors of not only their hard money but also their confidence in the strongest and fairest markets in the world. * * * They are the investment giants: Enron, Arthur Andersen, Adelphia, CMS Energy, Reliant Resources, Dynergy, Tyco International, and now Xerox and WorldCom. A mere handful of our nations top companies who have gone under as a result of misrepresented earnings and poor management. In less than a years time, these so-called investment giants through the great gift of deceit and tricky accounting practices have reduced themselves to mere shells of their former existence.

As a result, their use of tricky gimmicks to hide the real picture and literally milk the system dry have caused investors around the globe to question integrity of our nations markets, which are supposed to be the strongest and most resilient because they are perceived as the most open, most transparent markets in the world. Up until now, the United States had been a magnet for foreign investment. Yet, the selfish, greedy actions of a small few have led to a steady and precipitous drop in foreign investment in our financial markets.

It is no secret that greed played a major role in our markets rapid decline and slow demise. The heads of these entities stole millions, some billions of dollars from investors, and it is now time that we make them pay for their actions.

I commend the NASDAQ and the New York Stock Exchange for their announcements of new, tough corporate governance standards. The New York markets have taken the first steps to correct corporate corruption, and now it is our turn to find the right balance in light of these unsteady markets and times.

So what is the right balance? The right balance is one that will not only offer strict corporate governance laws, protect the average investor from being swindled out of his or her hard earned savings by a fast-talking, wheeling and dealing broker, but will also severely punish those individuals who intentionally mislead investors with faulty practices. That is why I am introducing the following amendments to the Public Company Accounting Reform and Investor Protection Act of 2002 to further limit the ability of company execs from personally manipulating and rigging the system for their personal benefit and interest.

The first amendment prohibits companies from issuing personal loans to company executives as seen with Worldcom, whose CEO received more than $300,000 in loans from the technology giant. Instead, CEOs will have to go to the bank, just like everyone else, to acquire a loan; which, will reduce the risk of CEOs ability to use company funds for personal purposes.

The second amendment requires company execs to forfeit any and all bonuses and additional compensation if their restatements occur along with criminal liability.

It is my hope that by revealing the few bad apples at the bottom of the barrel, and punishing these individuals for their immoral behavior, we can save the rest of the industry and restore confidence in our markets.

The legislation pending before us will make it harder for companies to lie about their assets. Thats the least we can do in re-establishing public confidence in corporate America. Our common purpose today is to ensure that the Enron's, the Tyco's, and the WorldCom's never happen again.

Now is the time for us to act. It is the least we can do to shore up the investing public's confidence in our markets.

Mr. WELLSTONE. Mr. President, 2 years ago it was pretty lonely being in favor of the auditor independence reforms that then-SEC Chairman Arthur Levitt said were necessary to guard against unprecedented accounting scandals. I am proud that I was one of the few who thought Chairman Levitt was going in the right direction. Unfortunately it took the implosion of several multi-billion dollar firms, and a loss of tens of thousands of jobs and hundreds of billions of dollars in investor equity, to prove that he was right. Now America's capital markets have been shaken by a dramatic loss in investor confidence, threatening the economic recovery.

But today, Congress has acted. I rise today in strong support of the Public Company Accounting Reform and Investor Protection Act conference report. I commend the Senator from Maryland, the Chairman of the Banking Committee for putting together significant, structural reform of corporate governance and auditor independence and for defending it in conference.

And I am heartened that the President and the House leadership have finally agreed to comprehensive reform instead of mere half-measures and tough rhetoric.

This bill holds the bad actors accountable for their fraud and deception. But the legislation goes much further, as it should, because the problem goes much deeper. We are faced with more than the wrong doing of individual executives, we are faced with a crisis in confidence in American capital markets and American business.

This conference report retains the strong Senate reforms virtually intact. It bars an auditor from offering audit services and other consulting services to the same client. It says publically traded companies must change the partner in charge of the audit every five years. It strengthens oversight of accountants, by establishing an independent board to set and enforce standards. And it enhances disclosure. This alone is real reform. But the bill does more. It makes corporate executives more accountable to their shareholders. It makes investment analysts more accountable to the public. And it's bill contains strong penalties for corporate wrongdoers.

All and all, this legislation lets the sunshine back into the smoke-filled corporate board rooms so that insiders have harder time cheating the outsiders. It is structural reform that restores checks and balances that will protect against fraud, deception, and reckless carelessness.

We need to restore America's faith in corporate America. It has gone beyond individual wrong doing. The system hides and encourages corruption. Today the Congress passes strong reform. Now I call on the President to make enactment and enforcement of this new law a priority.

Mr. BOND. Mr. President, last night, the conference committee released its final report on comprehensive accounting reform and corporate governance legislation. The reaction of our financial markets confirms that this legislation is absolutely necessary to help restore integrity and confidence to our free market system and our investment community.

However, in our rush to enact broad reforms, we may be damaging the economic framework for small companies to reach our capital markets. In the long term, the reforms will make our economy stronger. In the short term, we will be creating complete chaos for small publicly traded companies and companies trying to gain the capital for growth through stock offerings.

I am extremely disappointed in the conferees' decision not to recognize this fact and provide the Securities and Exchange Commission and the proposed Public Company Accounting Oversight Board with greater flexibility in dealing with small firms. Small business has been the driving force of our economy for well over a decade. The high hurdles in the legislation are necessary for large, conglomerate companies but they may be a trip wire for our small business entrepreneurial community.

Mr. SARBANES. Mr. President, I note that the Congress, in the Enhanced Review of Periodic Disclosures section in the Sarbanes-Oxley Act, provides for regular and systematic reviews by the Securities and Exchange Commission of the periodic reports filed by public companies that are listed on a national securities exchange or on Nasdaq. The section requires that there be some review of issuers' disclosures at least once every three years. The bill identifies factors which the Commission should consider in scheduling reviews, including the issuer's capitalization, stock price volatility and restatements of earnings. We expect the Commission to exercise its discretion to determine the appropriate level and scope of review for each company's reports in the furtherance of the protection of investors and the public interest.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, may I ask what the time situation is?

The PRESIDING OFFICER. The Senator from Maryland has 15 minutes 10 seconds. The Senator from Wyoming has 21 minutes 30 seconds.

Mr. SARBANES. I yield 3 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

Mr. President, this is an extremely important day for our capital markets, for our country, and for the future of our economy. As we all know, capitalism has its ups and downs and works in ups and downs, and there have been periods throughout our history—I can think of the S&L crisis a decade ago—where things get off track, out of control. It is our job as Government not to interfere with entrepreneurial vigor, not to create such regulation that they become

a straitjacketed company, but at the time when the markets show that things have gotten off track, it is our job to help put them back on track.

There is a bottom line principle here: If investors, whether throughout the United States or the rest of the world, do not believe companies are on the level, they will not invest. Unfortunately, the revelations of the last year have given people the view that they are not on the level. That it is not the same for them in terms of even information as it is for somebody at the top, that the information they may be getting may be wrong or distorted far beyond what they normally would in the world. So this bill puts that back.

I think it is a carefully balanced bill. There are some changes in it. There are some changes not in it that I would like to have seen, but the perfect should not be the enemy of the good. It is a good bill, a fine bill. In fact, when the agreement was reached, the Dow Jones went up 400 points. I do not think it was coincidental. Whether it be CEOs of large companies or individual investors, the public is saying to us, make it right. Look at the abuses that occurred in the past and make sure they cannot occur again, and do it in a careful way that keeps our markets fluid, liquid, deep, and important. I think this bill does it.

I want to pay a great deal of tribute to our chairman, Senator Sarbanes, and to so many others who made this bill a reality. With the passage of this bill, we can tell investors, while we have not cleared up every problem, and perhaps we will come back and address this later—I think we will have to in a couple areas—we have certainly made things better.

A few weeks ago, Washington looked as if it was dithering in the face of crisis, but today we proudly act in a bipartisan way to restore faith in our markets, the deepest, strongest, and best markets in the world.

I dare say, I know there are some who are against any change or any regulation, but our markets will be stronger tomorrow than they were this morning when this bill passes the House, the Senate, and is signed by the President.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, we are down quite far in our time. Senator Dodd, who wishes to speak, is at a memorial service. I suggest if the other side could use some of its time, it would be helpful in balancing this out. I ask unanimous consent that while we are trying to work this out the time not be charged to either party, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I yield 8 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, when we opened the conference on this legislation a week or so ago, I said my hope was the passage of this bill would be quick, decisive, and unanimous. Two out of three is not bad. We got quick and decisive and almost unanimous. Our colleague from Texas, and our friend, was unable to support the final product for reasons he has already explained.

I thought we did an excellent job in moving as quickly as we did. I believe passage of the legislation and the quick and decisive manner and nearly unanimous way we achieved the result and overwhelming support of the Senate and the House fulfill a responsibility of Congress to protect investors. There is more work to be done, but we have begun a significant part of the journey. In fact, we traveled a great distance down the road in fulfilling a congressional responsibility in responding to the events that began to unfold, at least to the public's awareness, last October. And the story is not yet complete. We do not know the final results.

I have a few minutes in which to share some thoughts. I am going to move quickly to share comments. I begin by commending my colleague from Maryland, the chairman of the Banking Committee, for the tremendous job he has done. I said yesterday, any students of the Congress of the United States who want to seek out good examples of how a legislative product can be developed, nurtured, analyzed, discussed, debated, and finally passed, this is about as good an example as I have seen in recent years of how one ought to proceed. Certainly the hearings we held in the Banking Committee I don't recall attracting much attention. I don't recall a single one of the 12 hearings we held appearing on the nightly news or being lead stories on some of the 24-hour news stations.

I recall a great many hearings where people sat there, raised their right hand, and took the fifth amendment. That got a lot of attention. The 12 hearings held in the Banking Committee of the Senate, where we went through the deliberate, slow, ponderous process of actually listening to people who had something to say about what ought to be done to clean up this mess, never made it on the nightly news that I am aware of.

I commend again my friend and colleague with whom I have enjoyed my service in the Congress of the United States for more than a quarter of a century. We have sat next to each other for a good part of that time in both the House and in this Chamber. I sit next to him on the Foreign Affairs Committee and on the Banking Committee. If I could make the choice and it would not be determined by seniority, I would make him my choice for seatmate. I have great respect for him and admire him immensely. He has proven the value of having Paul Sarbanes as a Member of this body.

I also point out the Presiding Officer, one of the most junior Members of this Chamber, who provided an incredible, invaluable support and source of ideas, guidance. Rarely does a new Member play such an important role on such an important piece of legislation. Of any Member who was involved in this process, Mike Enzi of Wyoming and others all would agree, in any history written of

the development of the bill, the role of a freshman Senator from the State of New Jersey named Jon Corzine needs to be talked about. He played a very important role. We would not be here without him. I tip my hat to him and to Mike Enzi, the only Member of this Chamber who actually knew something at a practical level about what it was to be an accountant and what life was like in the trenches.

For the staff and others who worked on this legislation, this was not the most popular idea in the world. Had it not been for unfolding events, I am not sure we would have developed that kind of support. I will love to one day tell my daughter, who is only an infant, that it was the power of our persuasion which convinced a majority here to go along.

Not many understood the value, the substantive value, of this bill. Mike Enzi did, a number of others did, there were many in the House who did, but an awful lot of people, even as late as a week ago, were suggesting maybe this bill was a bad idea, and that it would not go anywhere, and it shouldn't go anywhere; we ought to spend another couple of months thinking about it.

Those notices were not a month old, or 2 months old; that was 5 or 6 day ago. I understand it was the public's demand that we respond to this that had an awful lot to do with the support we garnered. That is all right. I never argue about how you get support around here as long as you get it in the end. We got it in the end, and that is the important news.

The fact is, we are about to vote overwhelmingly to support a very critical piece of legislation. I am confident, as he has already indicated, that the President will sign this bill into law. We are already seeing markets respond, not entirely because of this, but certainly in no small measure because of the events that have unfolded and the parts Congress played.

The chairman of the committee has talked about part of the bill. There are very important pieces, including the auditor independence. The board will be revolutionary in how it operates. Someone pointed out today, a lot of what the regulators do will determine the value of what we have written legislatively. I am confident that will be the case.

Having FASB now be compensated for and paid for from public money and not relying on the largess and generosity of the accounting industry to receive compensation will make a significant difference in establishing accounting rules and procedures. Certainly having prohibitions against those going from the industry, working for the clients for whom they have done audits, will have a beneficial effect on slowing down this not only appearance of conflict, but certainly the conflicts of interest that have occurred too often.

There are many other parts of the bill, including corporate penalties, that were crafted by our colleague from Vermont and other Members of the Judiciary Committee, that deserve a great deal of credit for their contribution to this process. The leadership, Senator Daschle, certainly for insisting we move as rapidly as we did to get the product done in committee and get it on the floor of the Senate, understanding how important this issue would be to the shareholder interests and pensioners and to others who depend upon a

solid, strong economy for their well-being—certainly their contribution is extremely important as well.

We have seen the economy begin to do a bit better. I don't think our work is done, despite the accomplishments in this legislation. My hope would be that before this Senate adjourns in a week and a half from now, we might deal with the pension issue. I don't know if that will be possible. I know there are a lot of other issues that need to be considered. My hope is if we are not able to do that in the next week and a half, we will come back soon after we reconvene in September.

I sit on the Health, Education, Labor, and Pensions Committee with the presiding officer who is interested in that committee. My hope is that we can deal with the pension reform matters that are necessary, as well, for adoption by this Congress before the 107th Congress adjourns.

Again, I commend all those involved. I thank Alex Sternhill of my office, Steve Harris, Marty Gruenberg, all the Members who worked with the chairman's committee and the full committee of the Senate Banking Committee, and those on the minority side, as well, who played an extremely important role.

While he disagreed with the final outcome of the bill, the Senator from Texas and I have had a great relationship over these many years we have served together. I have always enjoyed being on his side. He is a tough opponent, but when we worked together we have done some pretty good work around here and passed some pretty good bills.

He is leaving and I believe the Senate will be less vibrant an institution because of his absence. It is important that this place be a place of ideas for debate to occur, and the Senator from Texas has always made that kind of contribution.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DODD. Hang on. I am commending him. He is going to give me more time.

Mr. GRAMM. The Senator can have all the time he wants.

Mr. DODD. Mr. President, I have learned after more than 20 years that if you want the minority to give you a little more time, start complementing them. It is amazing. Egos are alive and well in the Senate.

I am going to miss him. He is not done. We have more work, obviously, in the remaining weeks, but this may be one of the last major bills the Banking Committee considers. I don't know what life holds for him down the road, but the good Lord is not done with him yet.

I look forward to your vibrancy, your ideas, and your passion in whatever role you decide to assume in the next part of your life, and thank you for the tremendous work you have given to the committee and this body through your service.

I thank again the chairman and other members of the committee for contributing to what may be one of the most important pieces of legislation this body will consider in the 107th Congress and one of the most important in the area of financial services in many, many decades.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from Texas has 14 minutes.

Mr. GRAMM. We were going to shoot for about 4:30 so I may yield some of it back, depending on who comes over.

Let me, first, thank my dear colleague, Senator Dodd, for his kind comments. I have enjoyed working with him over the years. I very much appreciate the comments he made.

I want to say something about my staff. A famous philosopher once said: In no way can you get a keener insight into the true nature of a leader than by looking at the people by whom he surrounds himself.

I would always be happy to have anybody judge me by Linda Lord and by Wayne Abernathy. It is amazing how much impact staffers have on the Senate. I am blessed in this area to have two of the best staff people who have ever served any Senator in the history of this country. On most issues on which I worked with Linda Lord, she knows more about this subject than anybody, and generally more than everybody else combined. In working with her, I see that the Lord was a great discriminator; he gave some people incredible ability and most of us he gave relatively few, in the way of talents. I thank her for the great job she has done.

I thank Wayne Abernathy. In the years I was chairman of the Banking Committee, Wayne Abernathy was chairman of the Banking Committee. In the day-to-day work, he has made an incredible contribution. If there is an unfairness to it, it is that I have gotten credit for all the good work that they have done, and I am grateful for that.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. SARBANES. I yield 1 minute to the Senator from Minnesota.

Mr. WELLSTONE. I thank the Senator from Maryland. I thank him for his great leadership and the other Senators working on this. I can only say this in 1 minute: I remember when Arthur Levitt came by several years ago to talk with me about the need for audit independence. Senator Sarbanes and others have made that possible. Many people took their savings, converted it to stock, and thought it would be there for their children or grandchildren. Many people had 401(k)s they were counting on. All of this has eroded in value. Investors do not have the confidence in the economy. I think the key is to make the structural change and make sure people can count on the independent audits, that no one is cooking their books. This is the best of government oversight. I am very proud to support this legislation.

Once again, I thank the chair of the Banking Committee for exceptional leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, as Senator Gramm was speaking earlier I was thinking to myself that he really was exemplifying on the floor of the Senate the sort of dialog we went through in the committee. As he was making an argument about auditor inde-

pendence, I was thinking that is really a very reasonable argument and one to which we really paid attention. I want to give the counterargument, and then make a concluding comment about the terrific work of the staff on this bill.

Senator Gramm has suggested that the conference report should be changed to give the SEC or the Oversight Board authority to grant broad categorical exemptions from the list of non-audit services that Section 201 of the bill prohibits registered public accounting firms to provide to public company audit clients.

Such a change, in my view, would weaken one of the fundamental objectives of the conference report: to draw a bright line around a limited list of non-audit services that accounting firms may not provide to public company audit clients because their doing so creates a fundamental conflict of interest for the accounting firms.

This limited list is based on a set of simple principles:

A public company auditor, in order to be independent, should not audit its own work (as it would if it provided internal audit outsourcing services, financial information systems design, appraisal or valuation services, actuarial services, or bookkeeping services to an audit client).

A public company auditor should not function as part of management or as an employee of the audit client (as it would if it provided human resources services such as recruiting, hiring, and designing compensation packages for the officers, directors, and managers of an audit client).

A public company auditor, to be independent, should not act as an advocate of its audit client (as it would if it provided legal and expert services to an audit client in judicial or regulatory proceedings.)

A public company auditor should not be a promoter of the company's stock or other financial interests (as it would be if it served as a broker-dealer, investment adviser, or investment banker for the company).

I want to emphasize that Section 201 does not bar accounting firms from offering consulting services. It simply requires that they not offer certain consulting services to public companies for which they wish to serve as "independent auditor." An accounting firm is free to offer any services it wants to any public companies it does not audit (or to any private companies). It also may engage in any non-audit service, including tax services, that is not on the list for an audit client if the activity is approved in advance by the audit committee of the public company.

The conference report does authorize the new Oversight Board, on a case-by-case basis, to exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of non-audit services to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

The exemptive authority provided the Board is intentionally narrow to apply to individual cases where the application of the statutory requirement would impose some extraordinary hardship or circumstance that would merit an exemption consistent with the protection of the public interest and the protection of investors.

But the fundamental presumption of the provision is that these non-audit services, by their very nature, present a conflict of interest for an accounting firm if provided to a public company audit client.

Arthur Andersen was conflicted because it served Enron as both an auditor and a consultant, and for two years it also served as Enron's internal auditor, essentially auditing its own work. Enron was Andersen's largest client, and in 2000 Andersen earned $27 million in consulting fees from the company ($25 million in audit fees).

In its oversight hearing earlier this year on the failure of Superior Bank in Hinsdale, Illinois, the Senate Banking Committee learned first-hand the risks associated with allowing accounting firms to audit their own work. In that case, the accounting firm audited and certified a valuation of risky residual assets calculated according to a methodology it had provided as a consultant. The valuation was excessive and led to the failure of the institution.

The SEC's recent actions against one of the large public accounting firms (KPMG) in an enforcement case illustrates the danger of allowing an accounting firm to serve as a broker dealer, investment advisor, or investment banker for a public company audit client (Porta Systems). In that case, the accounting firm set up an affiliate and the affiliate provided "turn around" services to the issuer, including functioning as the president of the company. There would have been no need for an SEC action if the non-audit service were simply prohibited.

The inherent conflict created by these consulting services has been exacerbated by their rapid growth in the last 15 years. According to the SEC, 55 percent of the average revenue of the big five accounting firms came from accounting and auditing services in 1988. Twenty-two percent of the average revenue came from management consulting services. By 1999, those figures had fallen to 31 percent for accounting and auditing services, and risen to 50 percent for management consulting services. Recent data reported to the SEC showed on average public accounting firms' non-audit fees comprised 73 percent of their total fees, or $2.69 in non-audit fees for every $1.00 in audit fees.

A number of the most knowledgeable and thoughtful witnesses who testified before the Senate Banking Committee in the hearings held in preparation for this legislation argued that the growth in the non-audit consulting business done by the large accounting firms for their audit clients has so compromised the independence of the audits that a complete prohibition on the provision of consulting services by accounting firms to their public audit clients is required. Perhaps the strongest advocates of this view have been the managers of large pension funds who are entrusted with people's retirement savings.

For example, the California Public Employees' Retirement System (CalPERS), manages pension and health benefits for more than 1.3 million members and has aggregate holdings totaling almost $150 billion. According to CalPERS CEO, James E. Burton:

> the inherent conflicts created when an external auditor is simultaneously receiving fees from a company for non-audit work cannot be remedied by anything less

than a bright-line ban. An accounting firm should be an auditor or a consultant, but not both to the same client.

John Biggs is CEO of Teachers Insurance and Annuity Association College Retirement Equities Fund (TIAA-CREF), the largest private pension system in the world, which manages approximately $275 billion in pension assets for over 2 million participants in the education and research community. Mr. Biggs was also a member of the last Public Oversight Board. He told the Committee that:

> TIAA-CREF does not allow our public audit firm to provide any consulting services to us, and our policy even bars our auditor from providing tax services.

The conference report chose not to follow the approach of imposing a complete prohibition on the provision of non-audit services to audit clients. Instead it chose the approach of identifying the non-audit services which by their very nature pose a conflict of interest and should be prohibited. Among those supporting this approach are former Comptroller General Charles Bowsher, former SEC Chairman Arthur Levitt, and former Federal Reserve Board Chairman Paul Volcker.

The argument is made that small companies, in particular, may be burdened by this requirement and that the SEC should have broad authority to grant categorical exemptions. It is even argued that so many companies would seek case-by-case exemptions that the SEC would become overwhelmed and would be unable to process the exemptions in a timely manner.

The point is that if the provision of a non-audit service to a public company audit client creates a conflict of interest for the accounting firm that non-audit service should be prohibited, whether the public company is large or small. Investors rely on the audit in making their investment decisions, and the independence of the audit should not be compromised by the provision of the non-audit service. If a legitimate exceptional hardship is imposed, then the Oversight Board would have the authority to grant case-by-case exemptions.

The present Comptroller General, David Walker, issued a particularly strong statement in support of the approach to auditor independence taken in the bill conference report I would like to quote:

> I believe that legislation that will provide a framework and guidance for the SEC to use in setting independence standards for public company audits is needed. History has shown that the AICPA [American Institute of Certified Public Accountants] and the SEC have failed to update their independence standards in a timely fashion and that past updates have not adequately protected the public's interests. In addition, the accounting profession has placed too much emphasis on growing non-audit fees and not enough emphasis on modernizing the auditing profession for the 21st century environment. Congress is the proper body to promulgate a framework for the SEC to use in connection with independence related regulatory and enforcement actions in order to help ensure confidence in financial reporting and safeguard investors and the public's interests. The independence provision [of the bill] . . . strikes a reasoned and reasonable balance that will enable auditors to perform a range of non-audit services for their audit clients and an unlimited range of non-audit services for their non-audit clients. . . . In my opinion, the time to act on independence legislation is now.

This auditor independence provision is at the very center of this legislation. It goes to the public trust granted to public accounting firms by our securities laws which require comprehensive financial

statements that must be prepared, in the words of the Securities Act of 1933, by "an independent public or certified accountant."

The statutory independent audit requirement has two sides, a private franchise and a public trust. It grants a franchise to the nation's public accountants—their services, and only their services—must be secured before an issuer of securities can go to market, have the securities listed on the nation's stock exchanges, or comply with the reporting requirements of the securities laws. This is a source of significant private benefit.

But the franchise is conditional. It comes in return for the CPA's assumption of a public duty and obligation. As a unanimous Supreme Court noted nearly 20 years ago:

> In certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility. . . . [That auditor] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

We must cut the chord between the audit and the consulting services which by their very nature undermine the independence of the audit. We must break this culture that exists, and to do that we need a bright line. In my view granting broad exemption authority to the Oversight Board or the SEC to permit these non-audit services would undermine the separation the conference report is intended to establish.

I wanted to underscore the fact that there was a very reasoned, intense discussion of these issues. There is reason on both sides. I thought the Senator made a very strong statement. I wanted to give the counterstatement here.

I share Senator Dodd's view about this exchange of ideas and its importance to the functioning of this institution. The Senator from Texas has certainly made an important contribution in that regard.

I wish to take a moment to recognize the terrific work of the staff. Senator Gramm referred to Wayne Abernathy and Linda Lord, and of course Mike Thompson and Katherine McGuire of Senator Enzi's staff; Laura Ayoud of the legislative counsel who worked day and night to put this thing in legislative language; the staff of the Banking Committee led by Steve Harris, Dean Shahinian, Steve Kroll, Lynsey Graham, Vincent Meehan, Sarah Kline, Judy Keenan, Jesse Jacobs, Craig Davis, Marty Gruenberg, Gary Gensler, and, as I said, all led so ably by Steve Harris.

We had the very able staff of the Senators on the committee: Alex Sternhell, Naomi Camper, Jon Berger, Jimmy Williams, Catherine Cruz Wojtasik, Leslie Wooley, Margaret Simmons, Matt Young, Roger Hollingsworth, and Matt Pippin.

I thank again all my colleagues who participated. I think I recognized most of them in the course of the day, and I want to say just a word about Chairman Oxley and Congressman LaFalce on the House side, who made it possible for us to work through this conference and with whom we have worked so cooperatively on so many issues that have come before our committee.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. SARBANES. How much time is remaining?

The PRESIDING OFFICER. The Senator from Maryland is without time. There are 12 minutes for the Senator from Texas.

Mr. GRAMM. Mr. President, we have reached the hour that we set for a vote. I am ready to yield back the 12 minutes and have the vote proceed.

I reiterate that this is a bill that was fraught with danger in the environment that we were in. Literally anything could have passed. I think, by a combination of good work and some good fortune, that has not been the case. We have a vehicle before us that I think will be complicated. It will be difficult to implement.

I think we will probably change it in the future. But I think in terms of our ability to prosper under the bill, and for the economy to survive not only the illness but the prescription of the doctor in this case, I think it is doable.

I yield the remainder of our time.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. SARBANES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. Helms) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 192 Leg.]

Yeas—99: Akaka, Allard, Allen, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bunning, Burns, Byrd, Campbell, Cantwell, Carnahan, Carper, Chafee, Cleland, Clinton, Cochran, Collins, Conrad, Corzine, Craig, Crapo, Daschle, Dayton, DeWine, Dodd, Domenici, Dorgan, Durbin, Edwards, Ensign, Enzi, Feingold, Feinstein, Fitzgerald, Frist, Graham, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Hollings, Hutchinson, Hutchison, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerry, Kohl, Kyl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Mikulski, Miller, Murkowski, Murray, Nelson (FL), Nelson (NE), Nickles, Reed, Reid, Roberts, Rockefeller, Santorum, Sarbanes, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stabenow, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voinovich, Warner, Wellstone, Wyden

Not Voting—1: Helms

The conference report was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DAYTON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.